

No. 12300

9591
United States
Court of Appeals
For the Ninth Circuit.

WALTER D. ACKERMAN, JR., individually and as Attorney
General of the Territory of Hawaii and JEAN LANE, in-
dividually and as Chief of Police of the County of Maui,
Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the
County of Maui, and WENDELL F. CROCKETT, individ-
ually and as Deputy to the County Attorney for the County
of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSE-
MEN'S UNION, a voluntary unincorporated association
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Transcript of Record
In Four Volumes

VOLUME I
Pages 1 to 556

Appeals from the United States District Court for the
Territory of Hawaii

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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International Longshoremen's &
Warehousemen's Union, et al.

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Walter D. Ackerman, Jr., et al.

In the United States District Court
For the District of Hawaii

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, A voluntary,
unincorporated association and labor union;
TERRITORIAL COUNCIL OF INTERNA-
TIONAL LONGSHOREMEN'S & WARE-
HOUSEMEN'S UNION, A voluntary,
unincorporated association and labor union;
JACK KAWANO, individually and as a mem-
ber of the ILWU and as President of the
Territorial Council of the ILWU; DIEGO
BARBOSA, JOHN MAILE, VICTOR DE-
GAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA,
SHIGHEYUKI MATSUURA, ABRAHAM
MAKEKAU, ELPIDIO SIRUET, MARI-
ANO BALDUA, NARCISSO SIPE and AN-
TONIO MENDES.

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii; INGRAM M. STAINBACK, individu-
ally and as Governor of the Territory of
Hawaii; E. R. BEVINS, individually and as
County Attorney for the County of Maui;
WENDELL F. CROCKETT, Individually and

as Deputy to the County Attorney for the County of Maui; JEAN LANE, individually and as Chief of Police of the County of Maui; CABLE A. WIRTZ, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; AUGUSTINE POMBO and CLAUDE E. CHATTERTON, both individually and as Jury Commissioners of the County of Maui; KENNETH AULD, EDWARD H. BALDWIN, RICHARD H. BALDWIN, EDWARD S. BOWMER, ROBERT P. BRUCE, ALFRED S. BURNS, RALPH O. CORNWELL, JACK COSTA, E. STANLEY ELMORE, ALLAN H. EZELL, HENRY S. S. FONG, CHARLES GOODNESS, WALTER W. HOLT, IRVING MAEDA, H. S. PETERSON, JOHN PLUNKETT, PAUL H. REINHART, ANTHONY A. TAM, CHARLES E. THOMPSON, WAI KEN TOM, and JOSEPH H. TRASK, individually and as Grand Jurors of the County of Maui, Defendants.

COMPLAINT FOR INJUNCTION; COMPLAINT TO REDRESS DEPRIVATION OF CIVIL RIGHTS; REQUEST FOR HEARING BY THREE-JUDGE COURT

Plaintiffs complain of defendants and allege:

I.

That the International Longshoremen's & Warehousemen's Union (hereinafter referred to as ILWU) and the Territorial Council thereof are

voluntary unincorporated associations and labor unions, having a membership of approximately 30,000 persons in the Territory of Hawaii, said members generally being employed as daily wage earners in the sugar, pineapple and longshore industries. That the plaintiff Jack Kawano is a member of said ILWU and the President of the said ILWU Territorial Council and brings this action individually and in a representative capacity for and on behalf of said ILWU and Council and the members thereof, and in order to protect and obtain the benefits of the Civil Rights Act and the Constitution of the United States of America and the Amendments thereof for its said members and particularly for the other plaintiffs herein.

II.

That plaintiffs John Maile, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Narcisso Sipe and Antonio Mendes are citizens of the United States. That the plaintiffs Diego Barbosa, Victor Degamo, Basiliso Arruiza, Elpidio Siruet and Mariano Baldua are aliens, and are citizens of the Philippine Republic. That all said plaintiffs are residents of the Territory of Hawaii, members of said ILWU, and are employed generally as daily wage earners in the pineapple industry of the Territory of Hawaii. That all of said plaintiffs other than plaintiff Antonio Mendes are members of races other than the

Caucasian race. That the race of each of said plaintiffs is that set opposite his respective name, as follows:

Plaintiff	Race
Diego Barbosa	Malayan (Filipino)
John Maile	Polynesian (Hawaiian) (Caucasian)
Victor Degamo	Malayan (Filipino)
Harry Kapena Kaopuiki	Polynesian (Hawaiian)
Isami A. Nitta	Mongolian (Japanese)
Ah Sing Ah Ho	Mongolian (Chinese)
James Kia Aikala	Polynesian (Hawaiian)
Shigeru Yagi	Mongolian (Japanese)
Basiliso Arruiza	Malayan (Filipino)
Midori Oda	Mongolian (Japanese)
Shigeyuki Matsuura	Mongolian (Japanese)
Abraham Makekau	Polynesian (Hawaiian) Mongolian (Chinese)
Elpidio Siruet	Malayan (Filipino)
Mariano Baldua	Malayan (Filipino)
Narcisso Sipe	Malayan (Filipino)

That the plaintiff Antonio Mendes is a member of the Caucasian race, but is of Spanish-Peruvian ancestry, and according to the custom and practice of the Hawaiian Islands is considered as a non-Caucasian.

III.

That the defendant Walter D. Ackerman, Jr., during all of the times herein mentioned was and

now is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii.

That the defendant Ingram M. Stainback during all of the times herein mentioned was and now is the duly appointed, qualified and acting Governor of the Territory of Hawaii.

That the defendant E. R. Bevins during all of the times herein mentioned was and now is the duly elected, qualified and acting County Attorney for the County of Maui.

That the defendant Wendell F. Crockett during all of the times herein mentioned was and now is the duly appointed, qualified and acting Deputy to the County Attorney for the County of Maui.

That the defendant Jean Lane during all of the times herein mentioned was and now is the duly appointed, qualified and acting Chief of Police of the County of Maui.

That the defendant Cable A. Wirtz during all of the times herein mentioned was and now is the duly appointed, qualified and acting Circuit Court Judge and Jury Commissioner of the County of Maui.

That the defendants Augustine Pombo and Claude E. Chatterton during all of the times herein mentioned were and now are the duly appointed, qualified and acting Jury Commissioners of the County of Maui.

That the defendants Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Corn-

well, Jack Costa, E. Stanley Elmore, Allan H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom and Joseph H. Trask during all of the times herein mentioned were and now are the duly appointed, qualified and acting Grand Jurors of the County of Maui.

IV.

That plaintiffs bring and maintain this action pursuant to, and the jurisdiction of this court is founded upon, the Civil Rights Act of the United States, being Title 8, United States Code, Chapter 3, Sections 41, 43, 44 and 46; 28 USC Sections 41(1) and 41(14); and the Constitution of the United States, Amendments I, V, VI, XIV and XIX.

V.

The instant case presents to this court a case and controversy arising under the Constitution and laws of the United States, and particularly the First, Fifth, Sixth, Fourteenth and Nineteenth Amendments to the Constitution and said Civil Rights Act.

VI.

That plaintiffs herein request that this case be heard and determined by a three-judge court, pursuant to and in conformity with Title 28 USC, Section 380 (Judicial Code, Section 266 amended).

VII.

1) That during all of the times herein mentioned there was and now is a statute of the Territory of Hawaii known as the unlawful assembly and riot statute, being Revised Laws of the Territory of Hawaii, 1945, Chapter 277, Sections 11570-11584, inclusive. That the text of said statute is attached hereto, marked Exhibit A, and incorporated herein by this reference, the same as though set forth in full immediately hereafter.

2) That during all of the times herein mentioned there was and now is in force and effect the Organic Act of the Territory of Hawaii, having as a component part thereof Section 83 relating in part to the composition of juries. That a copy of said Section 83 is attached hereto, marked Exhibit B, and incorporated herein by this reference the same as though set forth in full immediately hereafter.

3) That during all of the times herein mentioned there was and now is in full force and effect as a component part of the Revised Laws of Hawaii, 1945, as amended by the 1945 session laws, Section 9791, relating to the qualifications of jurors, both trial and grand jurors, and Section 9812, relating to the challenging of the Grand Jury. That copies of said sections are attached hereto, marked, Exhibit C, and incorporated herein by this reference the same as though set forth in full immediately hereafter.

VIII.

That from July 10, 1947, to and including July 15, 1947, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian pineapple industry. That the individual plaintiffs, other than Kawano, and the various local unions of the ILWU having members employed in the pineapple industry were on strike against the pineapple industry, seeking to improve their wages, hours and conditions of employment. That in connection with publicizing the facts of said labor dispute the plaintiffs herein during said times did engage in certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing.

IX.

That on or about July 15, 1947, the individual plaintiffs herein, other than Kawano, were arrested by the defendant Maui Chief of Police Jean Lane and his agents, officers, employees and representatives, and charged with purported violations of said unlawful assembly and riot statute hereinabove referred to. The plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda and Shigeyuki Matsuura were charged pursuant to a complaint, a copy of which is attached hereto, marked Exhibit D, and which complaint is incor-

porated herein by this reference the same as though set forth herein in full immediately hereafter. The plaintiffs Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes were charged pursuant to a complaint, a copy of which is attached hereto, marked Exhibit E, and which complaint is incorporated herein by this reference the same as though set forth herein in full immediately hereafter.

X.

That thereafter, to wit, on or about July 25, 1947, the defendants Ackerman, Stainback, Bevins and Crockett sought to present purported criminal charges framed by said complaints to the defendant Grand Jurors named herein and to obtain from said Grand Jury the indictment of plaintiffs, other than Kawano, for purported violations of said unlawful assembly and riot statutes.

XI.

That prior to July 25, 1947, said Grand Jury had been chosen, selected, formed and composed by the defendants Wirtz, Pombo and Chatterton, acting as the Grand Jury Commissioners for the County of Maui. That said defendants in so selecting, choosing, forming and composing said Grand Jury had violated various statutory and constitutional provisions referred to above and as more particularly set forth hereinafter.

XII.

That thereafter, to wit, on or about July 25, 1947, plaintiffs herein, other than Kawano, made and filed certain motions and challenges in the Circuit Court of the County of Maui, Territory of Hawaii, wherein said plaintiffs sought the disqualification and dismissal of said Grand Jury for the reasons hereinafter set forth.

XIII.

That said motions and challenges were heard by the Honorable Albert M. Cristy, Circuit Court Judge of the Territory of Hawaii, in hearings held in the Circuit Court of the County of Maui, Wailuku, Maui, on September 15, 16, 17 and 18, 1947. That upon the conclusion of said hearings the said Judge Cristy made and caused to be entered his order denying said motions and challenges, and refusing to disqualify or dismiss and discharge said Grand Jury and the members thereof.

XIV.

That unless restrained and prohibited by an injunction issued out of this court, defendants will immediately proceed to indict and place on trial the plaintiffs herein (other than Kawano), for alleged violation of the said unlawful assembly and riot statutes, as described in the complaints Exhibits D and E, and the defendants will purport to act under color of said statutes. That said unlawful assembly and riot statutes, and each and every part thereof, are violative of plaintiffs' civil rights and of the

Constitution of the United States and the amendments thereto, in the following respects:

1) In that said statutes and each and every part thereof prohibit the free exercise by plaintiffs of their rights of speech, press, assemblage, and of peaceful picketing, in contravention of the First, Fifth, and Fourteenth Amendments to the United States Constitution.

2) In that said statutes and each and every part thereof, if enforced against plaintiffs as defendants threaten to do herein, will deprive plaintiffs of their liberty and property without due process of law, in that plaintiffs will be prohibited from exercising their rights of free speech, press and assemblage in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

3) In that said statutes and each and every part thereof constitute a previous restraint upon the free exercise by plaintiffs of their constitutionally protected rights of speech, press and assemblage, in contravention of the First, Fifth and Fourteenth Amendments to the Constitution of the United States, and plaintiffs are thus subjected to criminal prosecutions and penalties for the exercise by them of said constitutionally protected rights.

4) In that said statutes and each and every part thereof are criminal statutes and they are so vague, indefinite, arbitrary and unreasonable that they fail to set up any definitely ascertainable standard of

guilt, and fail to apprise plaintiffs of what conduct on their part would subject them to prosecution for violation of said statutes, and therefore said statutes, and their attempted enforcement by defendants against plaintiffs deprive said plaintiffs of liberty and property without due process of law, in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

5) In that said statutes and each and every part thereof deprive plaintiffs of equal rights, privileges and immunities under the law, namely the rights of free speech, press, assemblage and picketing, in violation of the Civil Rights Act hereinabove referred to.

6) In that plaintiffs are forbidden the rights, privileges and immunities of speech, press and assemblage in publicizing the facts of the labor dispute above referred to while the same prohibition is not applied or enforced against the other disputants in the said strike situation, namely, the employer group, or to other groups in the community.

7) In that the said unlawful assembly and riot statutes are unconstitutional and void in that they violate the freedom of speech, press and assemblage provisions of the First and Fourteenth Amendments to the Constitution of the United States, and attempt to deprive persons falling within their prohibitions, such as plaintiffs, of liberty and property, in violation of the Fifth and Fourteenth

Amendments to the Constitution of the United States.

XV.

That if the defendant Grand Jury is permitted to consider and return indictments against plaintiffs, other than Kawano, said plaintiffs will be deprived of their rights in violation of the Sixth, Fourteenth and Nineteenth Amendments to the Constitution of the United States, the Civil Rights Act, Section 83 of the Organic Act of the Territory of Hawaii, and Sections 9791 and 9812 of the Revised Laws of the Territory of Hawaii, 1945, in the following respects:

1) Defendants Wirtz, Pombo and Chatterton, as the Grand Jury Commissioners of the County of Maui, formed selected, chose and returned said Grand Jury of the County of Maui in violation of the aforementioned constitutional and statutory provisions in that said defendants deliberately, intentionally and knowingly selected said Grand Jurors from amongst mainly the Caucasian and employer groups of the County of Maui, the territorial area over which said Grand Jury exercises jurisdiction.

That of said Grand Jurors approximately 76% are members of the Caucasian race and approximately 24% are members of races other than the Caucasian race. That in the population of the County of Maui approximately 74% are members of non-Caucasian races and approximately 26% are members of the Caucasian race.

That of the plaintiffs in this case and who are defendants in the purported criminal cases which defendants plan to bring, 15 or 93.7% are non-Caucasians, and 1 or 6.7% is Caucasian.

That of the said defendant Grand Jury approximately 89% are persons other than daily wage earners, namely, they are owners, managers, entrepreneurs, or clerical persons associated with the former groups. That of said Grand Jury approximately 11% are laborers or daily wage earners.

That amongst the Grand Jurors who propose to hear the case against plaintiffs none of them is a farm laborer, although approximately 50% of the employed persons of the County of Maui are farm laborers. That all of the plaintiffs herein (defendants in said unlawful assemblage and riot cases) are farm laborers.

That of the said Grand Jurors none are women, although in the County of Maui approximately 40% of the population are women.

That defendants Wirtz, Pombo and Chatterton in choosing, selecting, forming and composing the said Grand Jury have thus intentionally, arbitrarily and knowingly selected said Grand Jury from amongst the male, employer, Caucasian elements of the community and have failed to select Grand Jurors from amongst the non-Caucasian, daily wage earner, farm laborer and female portion of the population. That said Grand Jury is not an impartial Grand Jury and it is not a true, fair or reasonable cross-section of the population nor representative of the community in which said Grand Jury sits.

That because of the facts hereinabove alleged, if plaintiffs are to be subjected to indictment at the hands of said Grand Jury, they will be deprived of an impartial, representative and democratic Grand Jury, in violation of the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States and of the said Civil Rights Act.

2) That said Grand Jury has been selected by said defendants Wirtz, Pombo and Chatterton, acting as Jury Commissioners of the County of Maui, in violation of the provision contained in the Organic Act and Section 9791 of the Revised Laws of Hawaii, 1945, and in violation of 8 USCA 44, in that said Grand Jury has been deliberately and intentionally selected by said defendants with regard to race, color and nativity in that a deliberate and overwhelming selection has been made on said Grand Jury of members of the Caucasian race. That said defendants have intentionally, arbitrarily and knowingly completely excluded Filipinos, who are members of the Malayan race, from said Grand Jury, although there are more than 10,000 Filipinos, or 18.8% of the population, in the County of Maui, they being the second largest population group in said County of Maui. That there are a number of Filipinos who are qualified and eligible for service on said Grand Jury, but defendants have failed and refused to ever select or place any Filipino on the said Grand Jury of the County of Maui.

3) That the action of defendants Wirtz, Pombo and Chatterton in failing and refusing to put women on the Grand Jury of the County of Maui

is a direct violation of the Nineteenth Amendment to the Constitution of the United States. That there has never been a woman on the said Grand Jury of the County of Maui. That there are large numbers of women, residents and citizens of the County of Maui, who are qualified to serve as members of said Grand Jury. That the actions of said defendants in completely excluding women from said Grand Jury constitutes a violation of the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States, and deprives plaintiffs who are defendants in said unlawful assemblage and riot cases of an impartial, representative and democratic Grand Jury, in violation of their said constitutional rights.

4) That in selecting the aforesaid Grand Jury, the defendants Wirtz, Pombo and Chatterton, as Jury Commissioners of the County of Maui, have deliberately, intentionally and knowingly misapplied and misenforced Section 83 of the Organic Act of the Territory of Hawaii and Section 9791 of Revised Laws of Hawaii, 1945, in that said defendants have failed and neglected to select a representative, impartial or democratic Grand Jury for the County of Maui in the instant case, but on the contrary have selected a Grand Jury which is representative of only a small segment of the population.

XVI.

That the hearings referred to in Paragraph XIII, wherein plaintiffs attempted to challenge, disqualify

and dismiss said Grand Jury, were unfair and inequitable in that the said Judge Cristy deprived plaintiffs of, and refused to permit plaintiffs to have, a full, fair and impartial hearing on their said motions and challenges. That the said Judge Cristy had prejudged and predetermined said motions and challenges and the issues in said cause. That the record made before the said Judge Cristy, the comments of the said judge during the course of said hearings, and the opinion rendered by the said judge at the conclusion of the said hearings, which said record is incorporated herein by this reference and hereafter will be filed as an exhibit with this court, establish the fact that plaintiffs were denied a full, fair and impartial hearing in connection with said motions and challenges. That it is necessary and imperative that this Court assume jurisdiction in the matter in order that plaintiffs shall have an impartial, representative and democratic Grand Jury, and that they shall be allowed a full, fair and impartial hearing in connection with their said challenges and motions. That by his actions as herein described the said Judge Cristy deprived plaintiffs of the kind of an impartial hearing to which they are entitled under Section 9812 of the Revised Laws of Hawaii, 1945.

XVII.

That insofar as defendants purport to have selected said Grand Jury in conformity with Section

83 of the Organic Act of the Territory of Hawaii and Chapter 195 of the Revised Laws of Hawaii, 1945, said defendants, acting under color of said statutes, have deprived plaintiffs of a representative, impartial and democratic Grand Jury, in violation of the Civil Rights Act, the Fifth, Fourteenth and Nineteenth Amendments to the Constitution of the United States.

XVIII.

That unless an injunction issues out of this court prohibiting defendants from enforcing said unlawful assemblage and riot statutes against plaintiffs or submitting the charges against plaintiffs to said Grand Jury and prohibiting said Grand Jury from acting in any way in connection with this case against plaintiffs, plaintiffs will be deprived of rights secured to them by the Constitution and laws of the United States, as hereinabove alleged. That the case therefore is a proper case for injunctive relief. That plaintiffs have no plain, adequate or speedy remedy at law.

Wherefore, plaintiffs, and each of them, pray judgment against defendants, and each of them, as follows:

(1) That a temporary restraining order issue against defendants prohibiting the enforcement by said defendants of said unlawful assemblage and riot statutes, and prohibiting the submission to or consideration of said case by, or return of indictments by said Grand Jury against plaintiffs in

connection with said unlawful assemblage and riot charges.

(2) That a preliminary and permanent injunction issue against defendants to the same effect.

(3) That the Court find and make its order and judgment that the said unlawful assemblage and riot statutes contravene the Constitution and statutes of the United States.

(4) That the Court find and make its order and judgment that the manner of selection and the composition of said Grand Jury, and the attempted submission to it of charges against plaintiffs, contravene the Constitution and statutes of the United States.

(5) That an order to show cause be directed against defendants, and each of them, directing them to be and appear before this Court at a day and hour certain to show cause, if any they might have, why they should not be enjoined as herein prayed for.

(6) That this Court conduct hearings into the method of selection of, and the composition and character of said Grand Jury and make its order disqualifying, dismissing and discharging said Grand Jury.

(7) That this case be heard by a three-judge court.

(8) That the plaintiffs have their costs of suit

herein, and such other and further relief as is meet and just in the premises.

Dated: November 29th, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

GLADSTEIN, ANDERSEN,

RESNER & SAWYER,

By /s/ HERBERT RESNER,

Attorneys for Plaintiffs.

Territory of Hawaii,

City and County of Honolulu—ss.

Harriet Bouslog, being first duly sworn, deposes and says:

That she is one of the attorneys for the plaintiffs named in the within and foregoing complaint; that she makes this affidavit for and on behalf of plaintiffs as none of said plaintiffs are at present located within the City and County of Honolulu, T. H., wherein affiant maintains her office; that she has read said complaint and knows the contents thereof; that the same is true of her own knowledge except as to matters therein stated on information or belief, and as to such matters she believes it to be true.

/s/ HARRIET BOUSLOG.

Subscribed and sworn to before me this 1st day of December, 1947.

[Seal] /s/ EILEEN N. FUJIMOTO,

Notary Public in and for the
Territory of Hawaii.

My Commission expires: July 31, 1951.

EXHIBIT D

District Court of Lanai, County of Maui
Territory of Hawaii

COMPLAINT

Andrew S. Freitas, first being duly sworn, says:

That Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to wit the 14th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liberty of

them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 16th day of July, A.D. 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

EXHIBIT E

District Court of Lanai, County of Maui
Territory of Hawaii

COMPLAINT

Andrew S. Freitas, first being duly sworn, says:

That Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to wit the 15th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror, tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to wit: as-

saulting, beating, striking, pushing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 15th day of July, A.D. 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

[Endorsed]: Filed Dec. 1, 1947.

[Title of District Court and Cause.]

AFFIDAVIT OF HARRIET BOUSLOG IN
SUPPORT OF ORDER TO SHOW CAUSE
AND TEMPORARY RESTRAINING OR-
DER

Territory of Hawaii,
City and County of Honolulu—ss.

Harriet Bouslog, being first duly sworn, on oath, deposes and says: that I am one of the attorneys for the plaintiffs herein; that affiant has been advised by David W. Tallant, Deputy Clerk of the

Circuit Court of the Second Circuit, Territory of Hawaii, Wailuku, Maui, that the Grand Jury of the Second Circuit Court will meet on Tuesday, the 2nd day of December, 1947 at 9 a.m. at the Court House, Wailuku, Maui, Territory of Hawaii.

That affiant further says that the Supreme Court of the Territory of Hawaii on November 26, 1947, handed down a decision in the case of Territory of Hawaii v. Joseph Kaholokula, et al., being No. 2657 among the records of said court, wherein said court ruled that the unlawful assembly and riot law of the Territory of Hawaii being Chapter 277 Revised Laws of Hawaii 1945, Sections 11570 to 11584 both inclusive, are constitutional and do not violate or abridge rights guaranteed by the First Amendment and the Sixth Amendment to the Constitution of the United States.

/s/ HARRIET BOUSLOG.

Subscribed and sworn to before me this 1st day of December, 1947.

[Seal] /s/ EILEEN N. FUJIMOTO,
Notary Public,
First Judicial Circuit.

My Commission expires July 31, 1951.

[Endorsed]: Filed Dec. 1, 1947.

[Title of District Court and Cause.]

SUMMONS

To the above-named defendants:

You are hereby summoned and required to serve upon Harriet Bouslog, Myer C. Symonds, Gladstein, Andersen, Resner & Sawyer and Herbert Resner, plaintiffs' attorneys, whose address is: 206 Terminal Building.

An answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk of Court.

Date: Dec. 1, 1947.

Note: This summons is issued pursuant to Rule 4 of the Federal Rules Civ. Proc.

From the Minutes of the United States District
Court for the District of Hawaii
Monday, December 1, 1947

[Title of Causes.]

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein. This case was called for hearing on the prayer of the complaint for the issuance of temporary restraining order and order to show cause.

Following a discussion on this matter, the Court ordered a temporary restraining order issued and the order to show cause, returnable on December 10, 1947 at 10 a.m.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon the reading, filing and consideration of the verified complaint herein praying for an order directed to the defendants above named, to appear before the above-entitled court on a day certain and show cause why a preliminary injunction should not be granted herein, enjoining and restraining defendants above named from enforcing the unlawful assembly and riot statutes of the Territory of Hawaii and prohibiting the submission to or consideration of the unlawful assembly and riot charges by the Territory of Hawaii against plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes by the defendant Grand Jurors of the County of Maui alleged to have been selected and composed in contravention of the laws and statutes of the United States or the return of indictments by said Grand

Jury against said plaintiffs in connection with said unlawful assembly or riot charges, and further praying that pending the hearing of the said order to show cause, a temporary restraining order be issued herein, and

It appearing to the court from said complaint and the affidavit of Harriet Bouslog, filed herein, that if a temporary restraining order is not granted without notice, the said allegedly improperly constituted defendant Grand Jury will meet on December 2, 1947 at Wailuku, Maui, T. H. and will at said time and place consider the return of indictments against said plaintiffs in connection with unlawful assembly and riot charges based upon alleged activities of said plaintiffs on July 14, 1947 in Lanai City, County of Maui, T. H., thereby violating said plaintiffs alleged rights under the laws and Constitution of the United States before this court can determine on the merits the validity of the selection and composition of said Grand Jury which are alleged in the petition to be unlawful, thereby nullifying plaintiffs' alleged right to have the charges against them brought before a grand jury selected and composed in accordance with the laws and the Constitution of the United States and causing plaintiffs to suffer irreparable injury by subjecting plaintiffs to the danger of an indictment for a felony, thereby injuring the reputation and good names of said plaintiffs and bringing them into disgrace, odium and ridicule and causing them to be excluded from society, endangering their em-

ployment and their ability to support their families, and the court being fully advised in the premises and it being a proper case for this order,

It Is Hereby Ordered that the defendants above named be and they are hereby ordered to appear before the undersigned United States District Court Judge in his Court Room, Federal Building, Honolulu, T. H. on the 10th day of December, 1947, at the hour of 10:00 a.m. to show cause if any they have, why the preliminary injunction prayed for in said complaint should not be granted.

It Is Further Ordered that pending the hearing of the order to show cause that the defendants, Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii; Ingram M. Stainback, individually and as Governor of the Territory of Hawaii; E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and the agents, representatives and deputies of said defendants, and Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, be and they are hereby restrained and enjoined until the further order of this court from presenting or submitting the charges as aforesaid against said plaintiffs to the said Grand Jurors of the County of Maui.

Dated: December 1, 1947 at 7 p.m. at Honolulu, T. H.

[Seal] /s/ D. E. METZGER,
U. S. District Judge.

MARSHAL'S RETURN

The within Summons, Order To Show Cause and Temporary Restraining Order, was received by me on the 1st day of December, A.D. 1947, and is returned executed as follows:

On December 1st, 1947, personal service was made upon Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii; and upon Ingram M. Stainback, individually and as Governor of the Territory of Hawaii; by handing to and leaving with each of them personally a true copy of Summons, Order to Show Cause and Temporary Restraining Order. Further service was made on December 2nd, A.D. 1947 at Wailuku, Maui, upon E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui; Jean Lane, individually and as Chief of Police of the County of Maui; Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; Augustine Pombo and Claude E. Chatterton, both individually and as Jury Commissioners of the County of Maui; Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Jack Costa, E. Stanley Elmore, Allan H. Ezell, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Anthony A. Tam, Charles E. Thomson, Wai Ken Tam, and Joseph H. Trask, individually

and as Grand Jurors of the County of Maui; by handing to and leaving with each of them personally a true copy of Summons, Order to Show Cause and Temporary Restraining Order. Not served as to Alfred S. Burns, Ralph O. Cornwell and Paul H. Reinhart for the reason that they were out of jurisdiction. Also not served as to Henry S. S. Fong for the reason that he could not be located.

Dated at Honolulu, T. H., this 4th day of December, A.D. 1947.

/s/ OTTO F. HEINE,
U. S. Marshall,
District of Hawaii.

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT
FOR INJUNCTION

Now come plaintiffs above named and pursuant to Rule 15(a) of the Rules of Civil Procedure file this amendment to their Complaint for Injunction. Plaintiffs hereby amend Paragraph IV and Paragraph XVIII of said Complaint to read as follows:

IV.

The matter in controversy exceeds as to each plaintiff, exclusive of costs or interest, the sum of Three Thousand Dollars (\$3,000.00) and arises un-

der the Constitution and Laws of the United States; that the jurisdiction of this court is founded upon the Civil Rights Act of the United States, being Title 8, United States Code, Chapter 3, Sections 41, 43, 44 and 46; 28 USC Sections 41(1) and 41(14); and the Constitution of the United States, Amendments I, V, VI, XIV and XIX.

XVIII.

That unless an injunction issues out of this court prohibiting defendants from enforcing said unlawful assembly and riot statutes against plaintiffs or submitting the charges against plaintiffs to said Grand Jury and prohibiting said Grand Jury from acting in any way in connection with this case against plaintiffs, plaintiffs will be deprived of rights secured to them by the Constitution and laws of the United States, as hereinabove alleged. That as to the plaintiffs ILWU, Territorial Council of ILWU and Jack Kawano, individually and as a member of the ILWU and president of the Territorial Council of the ILWU, the value of said property rights and personal liberty to the said plaintiffs to be free to exercise the right to picket without fear of previous restraint and subsequent punishment, is in excess of the sum of Three Thousand Dollars (\$3,000.00). That the said plaintiffs have spent thousands of dollars in the organization and establishment of a trade union organization, which cannot function and exercise the said property rights and personal rights in the Territory or

in the County of Maui so long as the members of the said ILWU council and Jack Kawano are subject to indictment by an illegally constituted grand jury and subject to prosecution under statutes containing unconstitutional limitations on the right to picket because of the fear and intimidation of the members of said organizations engendered by the threat of punishment for the exercise of these rights guaranteed by the Constitution.

That the value of said property rights to each of the individual plaintiffs except Kawano and the value of the liberty of each of the said plaintiffs as hereinabove alleged is in excess of Three Thousand Dollars (\$3,000.00), in that each of the said plaintiffs will be forced, by virtue of the deprivation of these rights, to expend money and incur expenses to defend himself against charges returned by an illegally constituted grand jury under an unconstitutional statute, and each plaintiff will suffer by virtue of said charges and damages to his good name, reputation and fame. That each of the said plaintiffs is informed and believes that standing trial upon said charges will result in the loss of his employment and housing accommodations, inasmuch as the rules of said plaintiffs' employer subject him to dismissal if absent from employment for four days. That because of the economic structure of the Hawaiian Islands and because of the increasing unemployment, there is not open to said plaintiffs any other source of employment or living accommodations, all to the

damage of each of the said plaintiffs in excess of Three Thousand Dollars (\$3,000.00).

Dated: December 4, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,
GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

By /s/ HERBERT RESNER,
Attorneys for Plaintiffs.

Territory of Hawaii,
City and County of Honolulu—ss.

Jack Kawano, being first duly sworn, deposes and says:

That he is one of the plaintiffs named in the within and foregoing amendment to complaint; that he has read said amendment and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated on his information or belief, and as to such matters he believes it to be true.

/s/ JACK KAWANO.

Subscribed and sworn to before me this 4th day of December, 1947.

[Seal] /s/ EILEEN N. FUJIMOTO,
Notary Public in and for the Territory of Hawaii.
My Commission expires July 31, 1951.

[Endorsed]: Filed Dec. 4, 1947.

[Title of District Court and Cause.]

MOTION TO DISSOLVE TEMPORARY
RESTRAINING ORDER

Come now the defendants, Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii; Ingram M. Stainback, individually and as Governor of the Territory of Hawaii; E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, and pursuant to Rule 65(b) of the Federal Rules of Civil Procedure and the laws of the United States (28 U.S.C. sec. 381) move this Honorable Court to dissolve the temporary restraining order issued herein on December 1, 1947, on the following grounds:

I.

The temporary restraining order is not supported by jurisdiction of this Court over the subject matter in that:

1. Paragraph 14 of section 24 of the Judicial Code (Title 28, sec. 41(14) U.S.C.A.) does not apply to this Court or to the Territory of Hawaii.

2. The temporary restraining order was issued on a complaint which failed to allege any sum or value in controversy and hence was issued without

any jurisdiction in the Court, and was and is void.

II.

The Court has no jurisdiction to issue and continue the temporary restraining order, even under the bill as amended, in that:

1. Paragraph 14 of section 24 of the Judicial Code (Title 28, sec. 41(14) U.S.C.A.) does not apply to this Court or to the Territory of Hawaii.

2. There are no allegations in the complaint showing that the plaintiffs, International Longshoremen's & Warehousemen's Union, Territorial Council of International Longshoremen's & Warehousemen's Union, and Jack Kawano have any right to or need of a temporary restraining order, and the temporary restraining order does not show any reasons for its issuance in their behalf, only the sixteen individual plaintiffs (other than Kawano) being in any way involved in the pending criminal prosecutions.

3. The complaint fails to allege facts or circumstances showing that the matter in controversy as to each of said sixteen individual plaintiffs exceeds Three Thousand Dollars (\$3,000) exclusive of interest and costs, it appearing upon the face of the amended complaint that the allegations relating thereto are not well founded in law. Moreover, such facts as are alleged are not sufficient definite and certain to support the temporary restraining order. In so far as the complaint endeavors to

show that loss of employment and housing are involved, such allegations are not supportable on the facts, for it appears from the affidavit of C. C. Cadagan, filed herewith as Exhibit A and by reference made a part hereof, that attendance of said plaintiffs at the trial would not result in their loss of employment or housing.

III.

There is no sufficient showing of right to equitable relief in a federal court in that:

1. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending in a court of the Territory.

2. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

3. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

4. The complaint fails to show that any great and immediate irreparable injury to the plaintiffs is threatened, in that:

a. The complaint fails to show that more than one criminal proceeding is threatened, or that plaintiffs or any of them are now being deterred from the enjoyment of rights or privileges under the Constitution or laws of the United States by fear of the criminal penalties imposed by said chapter 277 of the Revised Laws of Hawaii 1945, or that anything at all is involved other than the possibility of prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

b. No loss of employment or housing is involved, as appears from the affidavit of C. C. Cadagan, filed herewith as Exhibit A and by reference made a part hereof.

c. The complaint fails to show great and immediate irreparable injury with respect to rights to improve employment conditions or any other property rights.

5. As to the plaintiff unions and Jack Kawano, no right to or need of a temporary restraining order is shown.

IV.

The questions sought to be raised in this proceeding as to the composition of the Grand Jury of the Second Judicial Circuit as now impaneled are res judicata, for as the complaint shows on its face and as shown by Exhibit E filed herewith and made a part hereof by reference, such questions have been heard and determined by a territorial court

of competent jurisdiction. No sufficient grounds to collaterally attack the decision of said court are shown.

V.

This Court has no jurisdiction to review the rulings of said territorial court, such review being confined to and available in a court of appellate jurisdiction.

VI.

Even if the plaintiffs were entitled to have this Court review the rulings of Judge Cristy (which defendants deny), the complaint is indefinite and uncertain in that it fails to show which rulings are objected to and merely offers to produce such information upon the trial, thereby wholly failing to support the temporary restraining order.

VII.

Whether or not Judge Cristy complied with section 9812 of the Revised Laws of Hawaii 1945 with respect to the hearing and determination of the Grand Jury challenges does not present a federal question.

VIII.

The allegation that Judge Cristy was prejudiced is not supported by the facts. The laws of the Territory of Hawaii afford an opportunity to challenge a judge for his bias or prejudice; the complaint fails to show that the plaintiffs ever made such a challenge; as shown by Exhibits B, C and D filed herewith and made a part hereof by reference, the

Honorable Cable A. Wirtz, the regularly appointed judge of the Circuit Court of the Second Judicial Circuit, voluntarily disqualified himself with respect to the Grand Jury challenges on the ground that he was a jury commissioner, and said disqualification having necessitated the selection of another judge, the Honorable Albert M. Cristy was the choice of the plaintiffs for designation as the judge to preside in such matter, and was so designated.

IX.

In so far as the complaint alleges the failure to include women on said Grand Jury, the complaint is insufficient, for it fails to allege that any of the plaintiffs are women, and it appears upon the face of the complaint that the exclusion of women is required by section 83 of the Hawaiian Organic Act, a valid statute of the United States, the validity of which is not attacked by the complaint.

X.

In so far as the composition of the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii as now empaneled is attacked by the complaint for failure to comply with sections 9791 and 9812 of the Revised Laws of Hawaii 1945, such allegations do not present a federal question.

XI.

The complaint fails to state a substantial federal question as to the validity of chapter 277 of the Revised Laws of Hawaii 1945, in that:

1. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii v. Joseph Kaholokula, et al., No. 2657", a copy of which is herewith filed as Exhibit F and by reference made a part hereof, the portion of said chapter 277 of the Revised Laws of Hawaii 1945 involved in this proceeding does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

2. Said complaint fails to allege that at the time of the occurrences referred to in Exhibits D and E of the complaint, for which occurrences the individual plaintiffs (other than Kawano) allege they fear criminal prosecution, plaintiffs were engaged in peaceful picketing or peaceable assembly, but on the contrary the complaint merely alleges that at unspecified times between July 10, 1947 and July 15, 1947 they were engaged in "certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing".

3. Said complaint shows on its face that defendants do not propose to prosecute the individual plaintiffs (other than Kawano) for peaceful picketing or peaceable assembly, and as to the remaining plaintiffs the complaint fails to show that any criminal or other proceedings against them are threatened.

4. The complaint fails to show that freedom of the press is in any way involved.

XII.

In preparing and presenting evidence to the Grand Jury of the Second Judicial Circuit, Territory of Hawaii, the defendants, Walter D. Ackerman, Jr., E. R. Bevins and Wendell F. Crockett are acting as prosecuting officers of the Territory of Hawaii and not as individuals; an action against them seeking to restrain the presentation of such evidence is an action against the Territory of Hawaii, which was not consented to be sued thereon.

XIII.

The complaint fails to show that the Attorney General and other prosecuting officers of the Territory have acted beyond the scope of their authority, or that they are in any way or manner making any oppressive or malicious use of the legal process of the Territory of Hawaii, or that such officers are not acting in good faith in the performance of their duties as such.

XIV.

A judge of a circuit court of the Territory of Hawaii cannot properly be made a party to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory fo Hawaii.

XV.

The complaint fails to show that any action against the plaintiffs or any of them is threatened

by the defendant, Ingram M. Stainback, individually or as Governor of the Territory of Hawaii, and wholly fails to show a cause of action against him.

XVI.

The complaint fails to state a cause of action for equitable relief or any other relief in favor of the unions or Jack Kawano.

XVII.

The temporary restraining order does not fix a day certain when the same shall expire, but on the contrary purports to restrain said defendants "pending the hearing of the order to show cause", which period might exceed the maximum period of ten days specified by Rule 65 of the Federal Rules of Civil Procedure and the laws of the United States (28 U.S.C. sec. 38).

Wherefore, defendants pray that said temporary restraining order be dissolved forthwith.

Dated at Honolulu, T. H., this 8th day of December, 1947.

WALTER D. ACKERMAN, JR.,

Individually and as Attorney General of the Territory of Hawaii, et al.

[Endorsed]: Filed Dec. 8, 1947.

[Title of District Court and Cause.]

NOTICE OF MOTION SERVED

To Harriet Bouslog, Myer C. Symonds, Gladstein,
Andersen, Resner & Sawyer, & Herbert Resner,
Attorneys for the Plaintiffs,

Please take notice, that on December 10, 1947 at the hour of 10 o'clock a.m., or as soon thereafter as counsel may be heard, we shall present to the Honorable D. E. Metzger, Judge of the Above Entitled Court, in his courtroom in the Federal Building, Honolulu, T. H., a motion to dissolve the temporary restraining order issued herein on December 1, 1947. There is herewith served upon you a copy of the motion which will be presented to the Court at the time aforesaid.

Dated at Honolulu, T. H., this 8th day of December, 1947.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

/s/ WENDELL F. CROCKETT,
RVL
Deputy County Attorney,
County of Maui,
Attorneys for Defendants.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Come now the defendants above named and for their return to the order to show cause issued herein on December 1, 1947, show:

I.

The Court has no jurisdiction to issue a preliminary injunction, even under the complaint as amended, in that:

1. Paragraph 14 of section 24 of the Judicial Code (Title 28, sec. 41(14) U.S.C.A.) does not apply to this Court or to the Territory of Hawaii.

2. There are no allegations in the complaint showing that the plaintiffs, International Longshoremen's & Warehousemen's Union, Territorial Council of International Longshoremen's & Warehousemen's Union, and Jack Kawano have any right to or need of a preliminary injunction, only the sixteen individual plaintiffs (other than Kawano) being in any way involved in the pending criminal prosecution.

3. The complaint fails to allege facts or circumstances showing that the matter in controversy as to each of said sixteen individual plaintiffs exceeds Three Thousand Dollars (\$3,000) exclusive of interest and costs, it appearing upon the face of the amended complaint that the allegations relating thereto are not well founded in law. Moreover, such facts as are alleged are not sufficiently defi-

nite and certain to justify a preliminary injunction. In so far as the complaint endeavors to show that loss of employment and housing are involved, such allegations are not supportable on the facts, for it appears from the affidavit of C. C. Cadagan, filed herewith as Exhibit A and by reference made a part hereof, that attendance of said plaintiffs at the trial would not result in their loss of employment or housing.

II.

The Court has no jurisdiction to issue a preliminary injunction, and there is no showing warranting equitable relief in a federal court, in that:

1. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending in a court of the Territory.

2. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

3. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

4. The complaint fails to show that any great and immediate irreparable injury to the plaintiffs is threatened, in that:

a. The complaint fails to show that more than one criminal proceeding is threatened, or that plaintiffs or any of them are now being deterred from the enjoyment of rights or privileges under the Constitution or laws of the United States by fear of the criminal penalties imposed by said chapter 277 of the Revised Laws of Hawaii 1945, or that anything at all is involved other than the possibility of prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

b. No loss of employment or housing is involved, as appears from the affidavit of C. C. Cadagan, filed herewith as Exhibit A and by reference made a part hereof.

c. The complaint fails to show great and immediate irreparable injury with respect to rights to improve employment conditions or any other property rights.

5. As to the plaintiff unions and Jack Kawano, no right to or need of a preliminary injunction is shown.

III.

The questions sought to be raised in this proceeding as to the composition of the Grand Jury of the Second Judicial Circuit as now impaneled are

res judicata, for as the complaint shows on its face and as shown by Exhibit E filed herewith and made a part hereof by reference, such questions have been heard and determined by a territorial court of competent jurisdiction. No sufficient grounds to collaterally attack the decision of said court are shown.

IV.

This Court has no jurisdiction to review the rulings of said territorial court, such review being confined to and available in a court of appellate jurisdiction.

V.

Even if the plaintiffs were entitled to have this Court review the rulings of Judge Cristy (which defendants deny), the complaint is indefinite and uncertain in that it fails to show which rulings are objected to and merely offers to produce such information upon the trial, thereby failing to afford defendants notice of the grounds upon which the preliminary injunction is sought.

VI.

Whether or not Judge Cristy complied with section 9812 of the Revised Laws of Hawaii 1945 with respect to the hearing and determination of the Grand Jury challenges does not present a federal question.

VII.

The allegation that Judge Cristy was prejudiced

is not supported by the facts. The laws of the Territory of Hawaii afford an opportunity to challenge a judge for his bias or prejudice; the complaint fails to show that the plaintiffs ever made such a challenge; as shown by Exhibits B, C and D filed herewith and made a part hereof by reference, the Honorable Cable A. Wirtz, the regularly appointed judge of the Circuit Court of the Second Judicial Circuit, voluntarily disqualified himself with respect to the Grand Jury challenges on the ground that he was a jury commissioner, and said disqualification having necessitated the selection of another judge, the Honorable Albert M. Cristy was the choice of the plaintiffs for designation as the judge to preside in such matter, and was so designated.

VIII.

In so far as the complaint alleges the failure to include women on said Grand Jury, the complaint is insufficient, for it fails to allege that any of the plaintiffs are women, and it appears upon the face of the complaint that the exclusion of women is required by section 83 of the Hawaiian Organic Act, a valid statute of the United States, the validity of which is not attacked by the complaint.

IX.

In so far as the composition of the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii as now impaneled is attacked by the complaint for failure to comply with sections 9791 and

9812 of the Revised Laws of Hawaii 1945, such allegations do not present a federal question.

X.

The complaint fails to state a substantial federal question as to the validity of chapter 277 of the Revised Laws of Hawaii 1945 and the convening of a three-judge court is not warranted, in that:

1. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii v. Joseph Kaholokula, et al., No. 2657", a copy of which is herewith filed as Exhibit F and by reference made a part hereof, the portion of said chapter 277 of the Revised Laws of Hawaii 1945 involved in this proceeding does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

2. Said complaint shows on its face that defendants do not propose to prosecute the individual plaintiffs (other than Kawano) for peaceful picketing or peaceable assembly, and as to the remaining plaintiffs the complaint fails to show that any criminal or other proceedings against them are threatened.

3. The allegations of the complaint do not present a justiciable controversy concerning future enforcement of said chapter 277 of the Revised Laws of Hawaii 1945, in cases not now pending.

4. Said complaint fails to allege that at the time

of the occurrences referred to in Exhibits D and E of the complaint, for which occurrences the individual plaintiffs (other than Kawano) allege they fear criminal prosecution, plaintiffs were engaged in peaceful picketing or peaceable assembly, but on the contrary the complaint merely alleges that at unspecified times between July 10, 1947 and July 15, 1947 they were engaged in "certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing".

5. The complaint fails to show that freedom of the press is in any way involved.

XI.

In preparing and presenting evidence to the Grand Jury of the Second Judicial Circuit, Territory of Hawaii, the defendants, Walter D. Ackerman, Jr., E. R. Bevins and Wendell F. Crockett are acting as prosecuting officers of the Territory of Hawaii and not as individuals; in considering such evidence the grand jurors of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, are acting as officers of the Territory of Hawaii and not as individuals; in convening the Grand Jury into session and receiving the indictments presented by it the Honorable Cable A. Wirtz is acting as a judge of a court of record of the Territory of Hawaii and not as an individual; an action against them seeking to restrain the convening of said Grand Jury, the presentation or

consideration of such evidence, or the receiving of such indictment, is an action against the Territory of Hawaii, which has not consented to be sued thereon.

XII.

The complaint fails to show that the Attorney General and other prosecuting officers of the Territory have acted beyond the scope of their authority, or that they are in any way or manner making any oppressive or malicious use of the legal process of the Territory of Hawaii, or that such officers are not acting in good faith in the performance of their duties as such.

XIII.

A judge of a circuit court of the Territory of Hawaii and the grand jurors thereof cannot properly be made parties to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory of Hawaii or the grand jurors thereof.

XIV.

The complaint fails to show that any action against the plaintiffs or any of them is threatened by the defendant, Ingram M. Stainback, individually or as Governor of the Territory of Hawaii, by the defendant Jean Lane, individually or as Chief of Police of the County of Maui, or by any of the Jury Commissioners, individually or in their official

capacity, and the complaint wholly fails to show a right to a preliminary injunction against them.

XV.

The complaint fails to state a cause of action for equitable relief or any other relief in favor of the unions or Jack Kawano.

Wherefore, defendants pray:

1. That the Court find and decide that there is no substantial federal question within the jurisdiction of the Court concerning the validity of a statute of the Territory, that the Court deny the request for a court of three judges, and that the Court deny the motion for a preliminary injunction forthwith.

2. That should this matter be heard by a court of three judges the motion for a preliminary injunction be denied by said Court.

Dated at Honolulu, T. H., this 8th day of September, 1947.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

/s/ WENDELL F. CROCKETT,
RVL
Deputy County Attorney,
County of Maui.
Attorneys for Defendants.

[Endorsed]: Filed Dec. 8, 1947.

[Title of District Court and Cause.]

Exhibits on Motion to Dissolve Temporary Restraining Order and on Return to Order to Show Cause.

EXHIBIT A

In the United States District Court
For the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union; et
al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii; et al.,

Defendants.

AFFIDAVIT OF C. C. CADAGAN

Territory of Hawaii,
City and County of Honolulu—ss.

C. C. Cadagan, being first duly sworn, deposes and says that he is a Vice President of Hawaiian Pineapple Company, Limited; that the following named individuals are presently in the employ of said Company on its Lanai Plantation: Diego Bar-

bosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes; that the following house rule of said Company governs the discharge of employees for absence from employment:

“Causes for Discipline or Discharge

* * *

12. Unexcused absences except in cases of emergencies or in case of sickness when notice must be given as soon as possible. During any one (1) month period any unexcused absences shall be treated as follows: The first offense may result in a warning, the second offense may result in a layoff or discharge. An employee who fails to report to work for five (5) consecutive working days without proper authorization and notification shall be dropped from the rolls”;

that it has been and will continue to be the policy of said company to grant excuses for absence deemed by said Company to be on reasonable grounds and of reasonable duration; that, in response to inquiry by the Attorney General of the Territory of Hawaii, said Company has determined that, upon their application, the absence from work of the above-named employees made necessary by indictment or prosecution for violation of the laws

of the Territory of Hawaii will be excused by the Company.

/s/ C. C. CADAGAN.

Subscribed and sworn to before me this 5th day of December, 1947.

[Seal] /s/ [Illegible.]

Notary Public, First Judicial Circuit, Territory of Hawaii.

My Commission Expires June 30, 1949.

EXHIBIT B

In the United States District Court
for the District of Hawaii
Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, A voluntary,
unincorporated association and labor union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Hawaii,
et al.,

Defendants.

AFFIDAVIT OF RHODA V. LEWIS
Assistant Attorney General

Territory of Hawaii,
City and County of Honolulu—ss.

Rhoda V. Lewis, being first duly sworn, deposes and says: That she is the duly qualified and acting

Assistant Attorney General of the Territory of Hawaii, as such is one of the attorneys for the defendants in the above-entitled matter, and also as such has participated, on behalf of the prosecution, in the matter of the challenges to the Grand Jury made in the Circuit Court of the Second Judicial Circuit of the Territory of Hawaii.

That on August 4, 1947 or August 5, 1947 deponent attended a conference in the chambers of Associate Justice E. C. Peters of the Supreme Court of the Territory of Hawaii concerning the disqualification of Judge Cable A. Wirtz, the regularly appointed judge of said second judicial circuit, to pass on said challenges. That as appears from Exhibit C-1 herein, Judge Wirtz had suggested his disqualification on the ground that he should not sit on his own acts as Jury Commissioner. That Harriet Bouslog, attorney for the defendants in said Circuit Court, who presented said challenges to the Grand Jury, and who are plaintiffs herein, was present at said conference, and stated that her clients did not take the position that Judge Wirtz was disqualified. That Judge Wirtz nevertheless disqualified himself, filing a supplemental certificate (Exhibit C-2 herein).

That on the same day or shortly thereafter, deponent discussed with Mrs. Bouslog the matter of the designation of another judge to sit on the hearing and determination of said challenges; that Mrs. Bouslog stated that the Honorable Albert M. Cristy was the preference of her clients for designation to

sit in such matter; that deponent having no objection to the designation of said Judge Cristy, Mrs. Bouslog and deponent conveyed this information to Associate Justice E. C. Peters of the Supreme Court of the Territory of Hawaii, presiding in the absence of Chief Justice S. B. Kemp; and that said Judge Cristy was duly designated to hear and determine the challenges to the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii which had been presented by Mrs. Bouslog's clients, as shown by Exhibit D herein.

That Exhibits C and D are true and correct copies of the certificates and order above mentioned, and that Exhibit E herein is a true copy of the amended challenges to the said Grand Jury above mentioned, as further amended on the hearing thereof.

/s/ RHODA V. LEWIS.

Subscribed and sworn to before me this 6th day of December, 1947.

[Seal]

/s/ ELEANOR PRENDERGAST,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: September 16, 1950.

EXHIBIT C-1

In the Circuit Court of the Second Circuit,
Territory of Hawaii

RIOT AND UNLAWFUL ASSEMBLY

Criminal No. 2413

TERRITORY OF HAWAII,

Plaintiff,

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KAI AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT AND UNLAWFUL ASSEMBLY

Criminal No. 2412

TERRITORY OF HAWAII,

Plaintiff,

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

CERTIFICATE OF DISQUALIFICATION AS
TO MOTIONS AND CHALLENGES DI-
RECTED AGAINST THE GRAND JURY

On July 29, 1947, prior to the retirement of the
Grand Jury of the Circuit Court, Second Circuit,

Territory of Hawaii, into session a Challenge for Cause to the grand jury panel as a whole, a Motion to Quash the grand jury panel as a whole, a Motion to Dissolve the entire grand jury list and discharge all members thereof, a Demand for Voir Dire hearings on challenges to grand jury panel and motion to quash and dissolve the grand jury panel and discharge the members thereof, a Challenge to Individual grand jurors for cause, an Affidavit of John Maile and a Memorandum on points and authorities were filed in these proceedings. A Motion to set the challenges and various motions referred to for hearing was granted and the matter was set for hearing tentatively for September 2, 1947, at 9:00 a.m.

On examination of the various motions and challenges it appears that the actions of the Jury Commission, of which by law the court is a member, have been directly challenged requiring a determination as to questions of fact and although no suggestion or motion or disqualification has been advanced by Defendants, or any of them, still the court feels that it can not sit on trial of its own actions as a Jury Commissioner.

Accordingly, by virtue of the provisions of Section 9573 of the Revised Laws of Hawaii, 1945, the court feels that it should disqualify itself as to the motions and challenges above referred to in these cases.

Therefore, this court, on its own motion, stands disqualified to hear the motions and challenges above referred to in these matters and will so inform the

Chief Justice of the Territory of Hawaii so that a substitute judge may be appointed to act on said motions and challenges.

Dated at Wailuku, Maui, Territory of Hawaii, this 31st day of July, A. D., 1947.

[Seal]

CABLE A. WIRTZ,
Judge, Circuit Court,
Second Circuit, T. H.

Filed July 31, 1947.

EXHIBIT C-2

In the Circuit Court of the Second Circuit,
Territory of Hawaii

RIOT AND UNLAWFUL ASSEMBLY
Criminal No. 2413

TERRITORY OF HAWAII,

Plaintiff,

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT AND UNLAWFUL ASSEMBLY

Criminal No. 2412

TERRITORY OF HAWAII,

Plaintiff,

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

SUPPLEMENTAL CERTIFICATE OF DIS-
QUALIFICATION AS TO MOTIONS AND
CHALLENGES DIRECTED AGAINST
THE GRAND JURY

This certificate is supplemental to that filed herein on July 31st, 1947.

The various challenges and motions referred to therein, amongst other things, charge that the Jury Commission of the Second Circuit Court in substance deliberately, intentionally and systematically, in derogation of the rights of defendants, discriminated in selecting the Grand Jury list for the January Term of Court, 1947 against the laboring class, against races other than the Caucasian race, against the feminine sex and against residents of the Island of Lanai. The Court, in addition to being a member of the Jury Commission by statutory requirement, was in fact active in all deliberations of the Jury Commission and actively participated in the selection of the Grand Jury List above referred to. The

above referred to motions and challenges likewise request an examination of each of the jury commissioners. Counsel for defendants have orally stated to the Court that they do intend to examine the Court in connection with the activities of the Jury Commission.

The anomalous situation then arises where the Court is placed in a position of being one of the officials whose actions are challenged, a material witness to the issues involved, and likewise the Judge to hear and determine those issues. Such a situation is, in the opinion of the Court, contrary to the fundamental concepts of the American judicial process.

The Court has no bias or prejudice against the defendants or any of them. It is the Court's ruling that he cannot preside in the hearing on the motions and challenges because a judge cannot be a participant in the proceeding before him to the extent above indicated. Accordingly, the last sentence of section 9573, R. L. 1945, applies. This Court stands disqualified to hear said motions and challenges.

Dated at Honolulu, Oahu, T. H. this 5th day of August, A. D., 1947.

/s/ CABLE A. WIRTZ,
Judge, Circuit Court,
Second Circuit, T. H.

Filed August 5, 1947.

EXHIBIT D

In the Supreme Court of the Territory of Hawaii
In the Matter of the Disqualification of the Honorable Cable A. Wirtz, Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, to Hear and Determine Certain Matters Herein Set Forth, and Authorizing the Honorable A. M. Cristy, Second Judge of the Circuit Court of the First Circuit, Territory of Hawaii, to Hear and Determine Said Matters and Other Like Matters.

ORDER AND AUTHORIZATION

It appearing that the Honorable Cable A. Wirtz, Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, is disqualified to hear and determine the issues presented by certain motions and challenges directed against the grand jury of said circuit which were filed in those certain proceedings in said circuit court entitled and numbered Territory of Hawaii, Plaintiff, vs. Diego Barbosa, et al., Defendants, Criminal No. 2413, and Territory of Hawaii, Plaintiff, vs. Abraham Makekau, et al., Defendants, Criminal No. 2412;

Now, therefore, by virtue of the authority vested in me by law, and particularly by the provisions of sections 9642 and 9602 of the Revised Laws of Hawaii 1945, I hereby authorize and require the Honorable A. M. Cristy, Second Judge of the Cir-

cuit Court of the First Circuit, Territory of Hawaii, to hear and determine the issues presented by the motions, challenges and related papers heretofore filed in said proceedings: to wit, challenge for cause to the grand jury panel as a whole, motion to quash grand jury panel as a whole, motion to dissolve entire grand jury list and to discharge all the members thereof; demand for voir dire hearing on challenge to grand jury panel and motions to quash and dissolve grand jury panel and discharge members thereof; challenge to individual grand jurors for cause; and affidavit of John Maile.

And I Further authorize and require the said Honorable A. M. Cristy to hear and determine any additional supplementary or amended motions or challenges which may hereafter be filed, as well as any other matters relating to such motions or challenges, in any proceeding above designated or otherwise, directed against the grand jury list heretofore selected for the January term of court 1947 of said circuit.

Witness my hand in the absence of the Chief Justice of the Supreme Court of the Territory of Hawaii and the seal of the Supreme Court of the Territory of Hawaii at Honolulu, T. H., this 7th day of August, 1947.

E. C. PETERS,

Associate Justice, Supreme
Court, Territory of Hawaii.

Filed August 7, 1947.

EXHIBIT E

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

RIOT AND UNLAWFUL ASSEMBLY

TERRITORY OF HAWAII,

Plaintiff,

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT AND UNLAWFUL ASSEMBLY

TERRITORY OF HAWAII,

Plaintiff,

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

I.

FIRST AMENDED CHALLENGE FOR CAUSE
TO THE GRAND JURY PANEL AS A
WHOLE AND TO THE GRAND JURY AR-
RAY IN THE ABOVE-ENTITLED CAUSE

Exhibit E—(Continued)

II.

FIRST AMENDED MOTION TO QUASH
GRAND JURY PANEL AS A WHOLE,
AND GRAND JURY ARRAY IN THE
ABOVE-ENTITLED CAUSE

III.

FIRST AMENDED MOTION TO DISSOLVE
ENTIRE GRAND JURY LIST AND TO
DISCHARGE ALL THE MEMBERS
THEREOF AND TO DISSOLVE GRAND
JURY ARRAY IN THE ABOVE-
ENTITLED CAUSE AND TO DISCHARGE
AND DISMISS ALL THE MEMBERS
THEREOF

Come now the defendants above named, personally, and by their counsel, Harriet Bouslog and Herbert Resner, and, having been held to answer a charge for a criminal offense, to wit, riot and unlawful assembly, before the above-entitled court and the grand jury thereof and an array of said grand jury, do herewith make the following challenge and motions in connection with the within charges and cause:

I.

Defendants, and each of them, challenge for cause the grand jury panel as a whole, and the particular array before whom it is expected that the cases of these defendants will be submitted.

Exhibit E—(Continued)

II.

Defendants, and each of them, move the above-entitled court to quash the said grand jury panel as a whole, and the particular array before whom it is expected that the cases of these defendants will be submitted.

III.

Defendants, and each of them, move the above-entitled court to dissolve the said grand jury list as a whole and discharge from service on said grand jury each and every member thereof, and dissolve the particular array of said grand jury before whom it is expected that the cases of these defendants will be submitted, and to dismiss and discharge from grand jury service each and every one of said grand jurors.

Defendants, and each of them, state and rely upon the following grounds, and each of them, in support of the foregoing challenge and motions, and state and allege that if said grand jury and grand jury array are permitted to consider, deliberate upon, return indictments, or take any action whatsoever with regard to or against defendants, or any of them, in the instant or any case, their rights will be violated as follows:

1) Said grand jury and grand jury array considering the instant cases have been chosen, selected, formed and returned by the grand jury commission of the above-entitled court and said court, and its officers, agents and representatives, in a manner

Exhibit E—(Continued)

contrary to and in violation of the 14th Amendment to the Constitution of the United States.

That if said grand jury and grand jury array is permitted to or does consider the charges against defendants, or any of them, or return indictment against them, or any of them, defendants, and each of them, will be deprived of and denied their rights under said 14th Amendment, to wit, they will be deprived of and denied due process of law, the equal protection of the laws, and their privileges and immunities as citizens of the United States, or as persons entitled to the protection of the laws of the United States, will be abridged.

In support of this ground of challenge defendants, and each of them, allege and assert that said grand jury and grand jury array is composed almost in its entirety of members of the employer class, and their representatives, agents and servants. That in the selection, formation, composition and return of said grand jury and grand jury array the said jury commission and court, and its officers, agents and representatives, have systematically, deliberately and intentionally selected and chosen members of said employer class and their representatives, agents and servants to serve thereon, and systematically, deliberately and intentionally excluded therefrom and denied membership thereon to members of the working or employee class, and members of trade unions.

Defendants, and each of them, further allege and assert that because of the reasons aforesaid said

Exhibit E—(Continued)

grand jury and grand jury array does not truly, fairly nor honestly represent a fair and impartial cross section of the community over which the above-entitled court and grand jury and grand jury array possess jurisdiction. That said grand jury and grand jury array are partial, partisan and biased in their composition and membership, all of which is contrary to and violative of the accepted American tradition of a fair, impartial and unbiased grand jury and grand jury array.

Defendants, and each of them, further allege and assert because of the reasons aforesaid, that if said grand jury and grand jury array is permitted to consider, deliberate upon, and return indictments against defendants, or any of them, or otherwise consider the instant charges, defendants, and each of them, will be denied a fair, impartial and representative grand jury and grand jury array and thereby the lives, liberty and property of said defendants, and each of them, will be placed in jeopardy and they will be threatend with the deprivation of their said lives, liberty and property without due process of law.

That they will be deprived of and denied the equal protection of the laws in that defendants, and each of them, are entitled to a jury of their peers, and the composition and membership of the instant grand jury is not one of their peers.

That the privileges and immunities of defendants, and each of them, as citizens of the United States,

Exhibit E—(Continued)

or as persons entitled to the protection of the laws of the United States, will be abridged in that they will be denied a fair, impartial and representative grand jury and grand jury array.

2) Said grand jury and grand jury array considering the instant charges have been chosen, selected, formed and returned by the jury commission of the above-entitled court and said court, its officers, agents and representatives, in violation of, and contrary to the 5th and 6th Amendments to the Constitution of the United States, and particularly the grand jury and grand jury array have been so formed, constituted, selected and returned contrary to and in violation of the due process of law clause of the 5th Amendment, and are not an impartial grand jury and grand jury array as required by the said 5th and 6th Amendments.

Defendants, and each of them, by this reference, reallege and incorporate in this ground of objection and challenge to said grand jury as a whole and the grand jury array herein the same reasons and grounds set forth in paragraph I hereinabove, with the same force and effect as though said grounds were set forth in full hereinafter.

Defendants particularly assert and allege that said grand jury and grand jury array do not represent a true, proper, unbiased, impartial and representative cross section of the community wherein the above-entitled court and grand jury have juris-

Exhibit E—(Continued)

diction in that the jury commission of the above-entitled court and said court, its officers, agents and representatives, have systematically, deliberately and intentionally selected members of the employer class and their representatives, agents and servants to serve upon said grand jury and grand jury array, and have deliberately, systematically and intentionally excluded therefrom members of the working or employee class, and trade unionists.

That defendants thereby have been denied and deprived of a fair and impartial grand jury and grand jury array, all contrary to and in violation of the said 5th and 6th Amendments.

3) Defendants, and each of them, challenge and object to said grand jury, and the whole thereof, and said grand jury array, and assert and allege that the jury commission of the above-entitled court and said court, its officers, agents and representatives, have selected, formed, chosen and returned said grand jury and grand jury array in violation of and contrary to the provisions of the 19th Amendment to the Constitution of the United States, which provides that the rights of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Defendants, and each of them, allege and assert that the said jury commission and court, its officers, agents and representatives, have systematically, deliberately and intentionally excluded members of the female sex from the membership and composi-

Exhibit E—(Continued)

tion of said grand jury and grand jury array and that there are no female members thereof.

That there are a large number of females, otherwise fully qualified, in the community over which the above-entitled court and grand jury and grand jury array possess jurisdiction and the failure and refusal of the said jury commission and court, its officers, agents and representatives, to include females and a representative number thereof upon the said grand jury is violative of the said 19th Amendment, and further is violative of the 5th, 6th and 14th Amendments of the Constitution of the United States.

That the deliberate and intentional elimination of females from said grand jury and grand jury array, as aforesaid, has rendered said grand jury and grand jury array not truly or fairly representative of the community wherein said court and jury have jurisdiction, and said grand jury and grand jury array thereby is not a true, proper, fair or representative cross section thereof.

That defendants thereby have been denied and deprived of a fair and impartial grand jury and grand jury array and defendants' rights under all of said Amendments to the Constitution of the United States thereby have been denied, abridged and violated.

4) Defendants, and each of them, allege and assert that the jury commission of the above-entitled court and said court, its officers, agents and representatives, have selected, composed, formed and re-

Exhibit E—(Continued)

turned said grand jury and grand jury array contrary to and in violation of the 5th, 6th and 14th Amendments of the Constitution of the United States in the following respects:

That said jury commission and court, its officers, agents and representatives, have deliberately, systematically and intentionally included in the membership of said grand jury and grand jury array by deliberate selection and inclusion therein a far larger proportion of persons of the Caucasian race than of non-Caucasian races resident within the jurisdiction of the above-entitled court and grand jury and grand jury array when regard is had to the population composition of said area, the fact being that the overwhelming majority of the population of said area is of races and nativity other than Caucasian.

That said jury commission and court, its officers, agents and representatives, have deliberately, systematically and intentionally excluded from the membership and composition of said grand jury and grand jury array members of non-Caucasian races, resident of the area wherein the above-entitled court and jury have jurisdiction when regard is had to the population composition of said areas as aforesaid.

That by deliberately so selecting an undue and improper proportion of members of the Caucasian race as members of said grand jury and grand jury array, and deliberately excluding therefrom a fair

Exhibit E—(Continued)

and proper proportion of non-Caucasian races from said grand jury and grand jury array, as aforesaid, said jury commission and court, its officers, agents and representatives, have deprived and denied the defendants, and each of them, of a fair, impartial and unbiased grand jury and grand jury array, and rendered said grand jury not truly, properly or fairly representative of the community wherein said grand jury and court have jurisdiction, all violative and in deprivation of the rights of defendants, and each of them, under the aforesaid 5th, 6th and 14th Amendments to the Constitution of the United States.

5) Defendants, and each of them, allege and assert that the jury commission of the above-entitled court and the said court, its officers, agents and representatives, have composed, formed, selected and returned the said grand jury and grand jury array in this case contrary to and in violation of the 5th, 6th and 14th Amendments to the Constitution of the United States in that said jury commission and court, its officers, agents and representatives, have deliberately and systematically chosen, formed, selected and returned said grand jury and said grand jury array in this case from amongst the residents of a particular geographical area over which the above-entitled court and jury possess jurisdiction and have systematically and deliberately excluded from said grand jury and said grand jury array in this case residents of other geographical locations within the said area.

Exhibit E—(Continued)

That the grand jury array in this case is composed of 19 residents of the Island of Maui and 2 residents of the Island of Molokai. That there are no residents of the Island of Lanai upon the grand jury array in this case. That the aforesaid Islands constitute the geographical area over which the above-entitled grand jury and grand jury array and court possess jurisdiction.

That said jury commission and court, its officers, agents and representatives, have systematically and deliberately formed, selected, and returned said grand jury and grand jury array in this case by placing thereon an overwhelming number of residents of the Island of Maui and have deliberately excluded residents of the Islands of Molokai and Lanai. That thereby said jury commission and court, its officers, agents and representatives, have deliberately excluded from said grand jury and said grand jury array in this case residents of geographical areas who are otherwise qualified to serve upon said grand jury and grand jury array in this case.

That thereby said grand jury and grand jury array in this case do not represent and are not a fair, true, impartial and representative cross section of the community over which said grand jury and court possess jurisdiction, and thereby defendants, and each of them, have been denied a fair, impartial and unbiased grand jury and grand jury array in violation of their rights under the afore-

Exhibit E—(Continued)

said 5th, 6th and 14th Amendments to the Constitution of the United States.

6) Defendants, and each of them, object to the consideration of their cases by and challenge said grand jury and the grand jury array in this case upon the further ground that Section 9791 (4) of the Revised Laws of Hawaii, 1945, which describes the qualifications of jurors to include the requirement that grand jurors must “understandably speak, read and write the English language” is contrary to and in violation of the 5th and 14th Amendments to the Constitution of the United States.

Said term “understandably” is not a phrase which is intelligible or understandable on its face, but is indefinite, vague and general and thereby its application and definition are left to the discretion, and subject to the abuse thereof, of the said jury commission.

That said statute creates no standard of conduct, meaning or common sense understanding for the application of said term and since said term forms a basis for the selection of grand jurors who are to sit upon the consideration and return of indictments in criminal cases and the instant case, it vests the said jury commission and court with power to, and they have in the instant case, hand-picked a jury according to their personal likes, dislikes, prejudices and predilections, and defendants, and each of them, thereof, have been denied a fair, impartial

Exhibit E—(Continued)

and unbiased jury in violation of their rights under the 5th, 6th and 14th Amendments to the Constitution of the United States.

That said requirement that a grand juror “understandably” speak, read and write the English language is particularly objectionable in the light of the geographical and historical setting in which it is employed. The native tongues of the citizenry of the area over which the above-entitled court and grand jury have jurisdiction are other than English, and thereby the requirement of a special knowledge of English, which in fact this qualification requires, can and does have the effect of disqualifying and has disqualified in the instant grand jury and the grand jury array in this case large numbers of otherwise qualified citizens, and barred them from grand jury duty.

That thereby said grand jury and the grand jury array in this case are not a true, fair, proper or impartial cross section of the said community over which they and said court exercise jurisdiction, and defendants, and each of them, have been denied a fair, impartial and unbiased grand jury and grand jury array, all in contravention of defendants’ rights under said 5th, 6th and 14th Amendments.

7) That Section 9791 (4) of the Revised Laws of Hawaii, 1945, which requires that a grand juror must “understandably speak, read and write the English language” is unconstitutional and in violation of the 5th, 6th and 14th Amendments to the

Exhibit E—(Continued)

Constitution of the United States in that said statute purports to set up a qualification for grand jury duty inconsistent with and contrary to said constitutional amendments.

That this requirement is in conflict with the right of United States citizenship. That such a qualification has the effect of and has denied membership on the instant grand jury and grand jury array in this case to otherwise qualified citizens and thereby is a grand jury and grand jury array composed of a particular class or group of citizens, namely, those of more formal education; and those of less formal education have been systematically and deliberately excluded.

That said grand jury and grand jury array do not represent a true, fair, impartial or representative cross section of the community in the area over which said court and grand jury possess jurisdiction and defendants, and each of them, thereby have been deprived of and denied a fair, impartial and unbiased grand jury and grand jury array, all in violation of the aforesaid 5th, 6th and 14th Amendments to the Constitution of the United States.

8) That Section 9791(3) of the Revised Laws of Hawaii, 1945, which requires that a grand juror must be "intelligent and of good character" is violative of the 5th, 6th and 14th Amendments to the Constitution of the United States.

That the inclusion of said qualifications for grand

Exhibit E—(Continued)

jury membership in said statute has the effect of and has denied membership on the instant grand jury and grand jury array to otherwise qualified citizens. That said qualifications for grand jury membership have enabled said jury commission and said court, its officers, agents and representatives, to exclude and they have deliberately and systematically excluded from membership on said grand jury and grand jury array otherwise qualified citizens in that said qualifications for membership have enabled said grand jury and court to, and they have excluded from membership on said grand jury and grand jury array, citizens who are not acceptable to said jury commission and court for insufficient, invalid and improper reasons.

That said qualifications for membership on said grand jury have enabled said jury commission and said court, its officers, agents and representatives, to exclude and they have systematically and deliberately excluded from membership thereon otherwise qualified citizens who have been excluded and barred from grand jury duty because of the likes, dislikes, prejudices and predilections of said jury commission and court, its officers, agents and representatives.

That said grand jury and grand jury array thereby does not represent a true, fair, proper, or impartial cross section of the community over which said court and jury commission possess jurisdiction and defendants, and each of them, thereby have been

Exhibit E—(Continued)

denied an impartial and unbiased grand jury and grand jury array in violation of the 5th, 6th and 14th Amendments to the Constitution of the United States.

IV.

Defendants, and each of them, allege and assert that the said jury commission has selected, composed, chosen and returned the said grand jury and grand jury array in violation of Section 9791(5) of the Revised Laws of Hawaii, 1945, in the following respect: Said section requires that grand jurors shall be summoned, returned and sworn without reference to race or place of nativity. Defendants, and each of them, allege that said court and jury commission have selected, summoned and returned said grand jury and grand jury array with reference to race and place of nativity in that said jury commission has selected an overwhelming number of members of the Caucasian race as members of said grand jury and grand jury array and has eliminated and excluded therefrom a fair and representative number of persons of non-Caucasian races, when regard is had to the population composition of the geographical area over which the said court and grand jury possess jurisdiction. That thereby the said jury commission has selected, summoned and returned said grand jury and grand jury array in violation of the aforesaid statute of the Territory of Hawaii and defendants, and each of them, have been thereby denied a fair, impartial and unbiased grand jury and grand jury array.

Exhibit E—(Continued)

This challenge and these motions are based upon all of the grounds aforesaid and are supported by the affidavits of John Maile and upon the memorandum of points and authorities filed and served with the original challenge and motions herein, upon all the files, records, papers and proceedings in the within court in connection with this matter, and upon argument of counsel.

Wherefore, defendants, and each of them, pray that their aforesaid challenge for cause to the grand jury panel as a whole and to the grand jury array in the above-entitled cause be allowed, and that their motions to quash the grand jury panel as a whole and the grand jury array in the above-entitled cause, and to dissolve the entire grand jury list and to discharge all the members thereof and to dissolve the grand jury array in the above-entitled cause and to discharge and dismiss all the members thereof be granted.

Dated: Honolulu, T. H., this 12th day of September, 1947.

HARRIET BOUSLOG,
HERBERT RESNER,
Attorneys for Defendants.

Filed September 12, 1947.

Exhibit E—(Continued)

In the Circuit Court of the Second Judicial Circuit
Territory of Hawaii

RIOT AND UNLAWFUL ASSEMBLY
TERRITORY OF HAWAII,
Plaintiff,

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,
Defendants.

RIOT AND UNLAWFUL ASSEMBLY
TERRITORY OF HAWAII,
Plaintiff,
vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,
Defendants.

FIRST AMENDED CHALLENGE TO INDIVI-
DUAL GRAND JURORS FOR CAUSE

Come now the defendants herein by their counsel,
Harriet Bouslog and Herbert Resner, and challenge
for cause the following grand jurors named herein:
Kenneth Auld of Hooluhua, Molokai.

Exhibit E—(Continued)

Edward H. Baldwin of Honuaula, Maui.

Richard H. Baldwin of Makawao, Maui.

Edward S. Bowmer of Mala, Lahaina, Maui.

Robert P. Bruce of Paia, Maui.

Alfred S. Burns of Honolua, Maui.

Jack Costa of Puunene, Maui.

Stanley Elmore of Maui.

Allan H. Ezell of Maui.

Henry Fong of Keokea, Maui.

Charles Goodness of Keokea, Maui.

Walter W. Holt of Haiku, Maui.

Irving Maeda of Wailuku, Maui.

H. S. Peterson of Kahului, Maui.

John Plunkett of Keanae, Maui.

Joseph H. Trask of Wailuku, Maui.

Defendants, and each of them, challenge each of the aforesaid grand jurors for the reason that they, and each of them, are biased and prejudiced against defendants; that said grand jurors are members of the employer class or their representatives; that said grand jurors are connected with, either directly or indirectly, the various business concerns involved in the recent pineapple strike out of which the instant cases arose; that defendants, and each of them, cannot get a fair or impartial consideration of the charges against them at the hands of the aforesaid grand jurors.

Defendants, and each of them, challenge the remaining members of the entire grand jury panel

Exhibit E—(Continued)

as well as the members of the grand jury array named herein, said challenge to the balance of the panel being upon the same grounds as the challenge to the individual grand jurors named herein.

Defendants, and each of them, demand that they be permitted to examine each and every one of the grand jurors of the particular array in this case and also the remaining members of the entire grand jury panel on voir dire hearing in connection with the challenge and in support of same.

Wherefore, defendants, and each of them, pray that this challenge for cause to each of the aforesaid grand jurors be allowed and that said grand jurors be excluded from a consideration of the instant charges.

HARRIET BOUSLOG,
HERBERT RESNER,
Attorneys for Defendants.

Exhibit E—(Continued)

In the Circuit Court of the Second Judicial Circuit
Territory of Hawaii

Cr. No. 2413

TERRITORY OF HAWAII

vs.

DIEGO BARBOSA, et al,

Cr. No. 2412

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al.

AMENDMENT TO DEFENDANTS' CHAL-
LENGES AND MOTIONS IN RE GRAND
JURY PANEL AND ARRAY

Come now all of the defendants herein, amend their challenges and motions on file herein, and allege as follows:

That they, and each of them are members of the working class and are farm laborers or day laborers; that they are members of a trade union, namely, the International Longshoremen's and Warehousemen's Union; that said union and these defendants were on strike against the pineapple industry of Hawaii including the industry on the Islands of Maui, Lanai and Molokai from July 10 to July 15, 1947; that the instant charges grow out of said

Exhibit E—(Continued)

pineapple strike; that defendants were arrested in connection with labor activities in conjunction with said strike;

That defendants other than Antonio Mendes are all members of races other than the Caucasian race, namely, that Diego Barbosa is Filipino; Harry Kapena Kaopuiki is Hawaiian; Isami A. Nitta is Japanese; John Maile is Hawaiian; Victor Degamo is Filipino; Ah Sing Ah Ho is Chinese; James Kia Aikala is Hawaiian; Shigero Yagi is Japanese; Basiliso Arruiza is Filipino; Midori Oda is Japanese; Shigeyuki Matsuura is Japanese; Abraham Makekau is Hawaiian; Elpidio Siruet is Filipino; Mariano Baldua is Filipino; Narcisso Sipe is Filipino; Antonio Mendes is Caucasian, namely, Spanish-Peruvian.

That the defendants and each of them are within the class or groups of persons excluded from membership and service on the grand jury list and grand jury array under challenge in the instant case.

Dated at Maui, T. H. September 18, 1947.

HARRIET BOUSLOG,
HERBERT RESNER.

Filed Sept. 18, 1947.

EXHIBIT G

District Court of Lanai, County of Maui,
Territory of Hawaii

Circuit Court Criminal No. 2412

COMPLAINT

Andrew S. Freitas first being duly sworn says:

That Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 15th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled to-gether with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 15th day of July, A. D., 1947.

/s/ YOUNG WA,

District Magistrate of Lanai
County of Maui.

District Court of Lanai County of Maui

RIOT

THE TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES.

WARRANT OF ARREST

Issued at 10:00 o'clock A. M., July 15, 1947.

/s/ JOSEPHINE K. MEDEIROS,
Clerk.

Returned at 6:10 o'clock P. M., July 15, 1947.

/s/ JOSEPHINE K. MEDEIROS,
Clerk.

Executed the within Warrant on the person of
Abraham Makekau, Elpidio Siruet, Mariano Bal-
dua, Narcisso Sipe, Antonio Mendes Lanai City,
Lanai, T. H.

Named therein, this 15th day of July, 1947.

/s/ J. D. SEABURY,
Police Officer.

District Court of Lanai,
Tuesday, July 15, 1947

Case No. 91

TERRITORY OF HAWAII,

vs.

ABRAHAM MAKEKAU,
ELPIDIO SIRUET,
MARIANO BALDUA,
NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

RIOT

Mr. Frank Crockett Counsel for Prosecution

Mr. Celedonio Asuncion Sworn in as Interpreter

Mr. Crockett reads complaint to defendants:

Andrew S. Freitas, first being duly sworn says:

That Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 15th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, push-

ing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.

The Court: To each defendant, Do you understand the charge?

A. Yes, by each defendant.

The Court: To each defendant, Do you wish to waive preliminary examination in this court?

A. Yes, by each defendant.

The Court: The defendants having waived preliminary examination in this court, they are therefore committed to the Circuit Court of the Second Judicial Circuit to await the actions of the Grand Jury.

Defendants released under Bond of \$1000, each as ordered by Judge Cable Wirtz through Police radio.

/s/ JOSEPHINE K. MEDEIROS,
District Court Clerk.

/s/ YOUNG WA,
District Magistrate,
Acting Magistrate,
District Court of Lanai.

In the District Court of Lanai, County of Maui,
Territory of Hawaii

Case No. 91

RIOT

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, ELPIDIO SIRUET,
MARIANO BALDUA, NARCISSE SIPE,
ANTONIO MENDES,

Defendants.

MAGISTRATE'S CERTIFICATE

Territory of Hawaii, County of Maui, ss.

I Young Wa, Acting District Magistrate of Lanai, County of Maui, Territory of Hawaii, do hereby certify that the documents hereto attached, to-wit: Copy of Complaint and copy of my record showing the charges and proceedings had against the above named defendants, are full, true and faithful, and all of which, are herewith sent up to the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, this 15th day of July, A. D. 1947.

/s/ YOUNG WA,

Acting, District Magistrate,
County of Maui.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the

office of the clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated at Wailuku, Maui, T. H., Dec. 8th, A. D. 1947.

[Seal] /s/ D. W. TALLANT,
Deputy Clerk, Circuit Court,
Second Circuit,
Territory of Hawaii.

EXHIBIT H

District Court of Lanai, County of Maui,
Territory of Hawaii

Circuit Court Criminal No. 2413

COMPLAINT

Andrew S. Freitas First being duly sworn says:

That Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James 'Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 14th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez,

Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liberty of them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 16th day of July, A. D., 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

District Court of Lanai, County of Maui
RIOT

THE TERRITORY OF HAWAII

vs.

DIEGO BARBOSA and 10 others

WARRANT OF ARREST

Issued at 10:00 o'clock A. M., July 16, 1947.

/s/ JOSEPHINE K. MEDEIROS,
Clerk.

Returned at 2:00 o'clock P. M., July 16, 1947.

/s/ JOSEPHINE K. MEDEIROS,
Clerk.

District Court of Lanai
Wednesday, July 16, 1947

Case No. 92

TERRITORY OF HAWAII

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTA, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

RIOT

Mr. Andrew S. Freitas Counsel for Prosecution

Mr. Celedonio Asuncion Sworn in as Interpreter

Mr. Freitas reads complaint to defendants:

Andrew S. Freitas, first being duly sworn says:

That Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 14th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously

join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and livery of them the said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others contrary to the form of the statutes in such cases made and provided.

The Court: To each defendant, Do you understand the charge?

A: Yes, by each defendant.

The Court: To each defendant, Do you wish to waive preliminary examination in this court?

A: Yes, by each defendant.

The Court: The defendants having waived preliminary examination in this court, they are therefore committed to the Circuit Court of the Second Judicial Circuit to await the actions of the Grand Jury.

Bond as authorized by Judge Wirtz for each defendant are set as follows:

Diego Barbosa	\$1000.00
John Maile	1000.00

Victor Degamo	500.00
Harry K. Kaopuiki	250.00
Isami A. Nitta	250.00
Ah Sing Ah Ho	250.00
James Kia Aikala	500.00
Shigeru Yagi	250.00
Basiliso Arruiza	500.00
Midori Oda	250.00
Shigeyuki Matsuura	250.00

\$5000.00

/s/ JOSEPHINE K. MEDEIROS,
District Court Clerk.

/s/ YOUNG WA,
District Magistrate,
Acting Magistrate,
District Court of Lanai.

In the District Court of Lanai, County of Maui,
Territory of Hawaii
Case No. 92

RIOT

TERRITORY OF HAWAII

vs.

DIEGO BARBOSA, JOHN MAILE, VICTOR
DEGAMO, HARRY KAPENA KAOPUIKI,
ISAMI A. NITTI, AH SING AH HO,
JAMES KIA AIKALA, SHIGERU YAGI,
BASILISO ARRUIZA, MIDORI ODA, SHI-
GEYUKI MATSUURA,

Defendants.

MAGISTRATE'S CERTIFICATE

Territory of Hawaii, County of Maui, ss.

I Young Wa, Acting District Magistrate of Lanai, County of Maui, Territory of Hawaii, do hereby certify that the documents hereto attached, to-wit: Copy of Complaint and copy of my record showing the charges and proceedings had against the above named defendants, are full, true and faithful, and all of which, are herewith sent up to the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, this 16th day of July, A. D. 1947.

/s/ YOUNG WA,

Acting, District Magistrate,
County of Maui.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Dec. 8th, A. D. 1947.

/s/ D. W. TALLANT,
Deputy Clerk, Circuit Court,
Second Circuit,
Territory of Hawaii.

From the Minutes of the United States District
Court for the District of Hawaii

Wednesday, December 10, 1947

[Title of Causes.]

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Deputy Attorney General of the Territory of Hawaii, and Mr. W. F. Crockett, Deputy County Attorney for the County of Maui, counsel for the defendants herein. This case was called for hearing on motion to dissolve the temporary restraining order and on the return to the order to show cause.

At 10 a.m., opening argument was had by Miss Lewis, followed at 11:21 a.m., by Mr. Crockett.

At 12:06 p.m., the Court ordered that this case be continued to 1:30 p.m., this day.

At 1:35 p.m., argument was had by Mrs. Bouslog.

At 3:45 p.m., closing argument was had by Mr. Crockett, followed at 3:50 p.m., by Miss Lewis.

At 4:10 p.m., argument was had by Mr. Symonds.

At 4:20 p.m., following said argument, the Court denied the motion to dissolve the temporary restraining order and ordered an amended temporary restraining order issued as of this date.

The Court then found that this matter properly constituted a cause to be heard by a three-Judge court.

In the United States District Court for the
District of Hawaii

Civil No. 828

ORDER ON MOTION TO DISSOLVE TEM-
PORARY RESTRAINING ORDER AND
AMENDED TEMPORARY RESTRAINING
ORDER

The order issued on December 1, 1947 directed to the defendants to show cause why a preliminary injunction should not be entered herein and the return of the defendants to said order to show cause, and the motion of defendants to dissolve the temporary restraining order herein, having come on regularly for hearing before the undersigned District Court Judge at his courtroom, Federal Building, Honolulu, T. H., on December 10, 1947 at the hour of 10 A. M., and the plaintiffs appearing by Harriet Bouslog, Myer C. Symonds and Gladstein, Andersen, Resner and Sawyer by Harriet Bouslog

and Myer C. Symonds, their attorneys, and the defendants appearing by Rhoda V. Lewis and Wendell F. Crockett, their attorneys and the matter having been orally argued and submitted to the court for decision, and

It appearing to the court that the plaintiffs seek a preliminary injunction prohibiting the enforcement by defendants of the unlawful assembly and riot statute of the Territory of Hawaii, and prohibiting the submission to or consideration of the pending unlawful assembly and riot charges against plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes, by or return of indictments by the defendant Grand Jurors of the County of Maui against said plaintiffs in connection with said charges, and

It further appearing to the court that the complaint herein presents a substantial claim of invalidity of said unlawful assembly and riot statute, and

It further appearing to the court from Title 28 USC Section 380 (Judicial Code 266, Amended) that a preliminary injunction restraining enforcement of a territorial statute can be granted only by a three-judge court convened in accordance with the provisions of said Section 266 of the Judicial Code, and that this is a proper case for the convening of a three-judge court pursuant to such statute, and

It further appearing to the court that pending

the convening and hearing of said application for a preliminary injunction by a three-judge court the defendant Grand Jurors of the County of Maui will meet and consider the return of an indictment against plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes in connection with unlawful assembly and riot charges based upon alleged activities of said plaintiffs on July 14, 1947 in Lanai City, Lanai, County of Maui, Territory of Hawaii and thereby a change in the status quo will be effected before a three-judge court can be convened, and the plaintiffs will be subjected to the danger of an indictment for a felony under the said alleged unlawful assembly and riot statute by the said defendant Grand Jurors of the County of Maui, and the court being fully advised in the premises and it being a proper case for this order,

Is Is Hereby Ordered that the motion of the defendants to dissolve the restraining order issued herein on December 1, 1947 be and the same is hereby granted on the ground that said temporary restraining order was issued without jurisdiction, in that the original complaint failed to allege the amount in controversy, and the complaint having been amended prior to the hearing herein,

It Is Further Ordered that pending the convening, hearing, and determination of the mo-

tion for a preliminary injunction as prayed for in the complaint by a three-judge court, that the defendants Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii; Ingram M. Stainback, individually and as Governor of the Territory of Hawaii; E. R. Bevins, individually and as County Attorney for the County of Maui, Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and the agents, representatives and deputies of said defendants, and Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, be and they are hereby restrained and enjoined from presenting or submitting the charges as aforesaid against said plaintiffs to any Grand Jurors of the County of Maui.

Dated at Honolulu, T. H., this 10th day of December, 1947, at 5:30 P. M.

/s/ D. E. METZGER,
Judge.

[Endorsed]: Filed Dec. 23, 1947.

From the Minutes of the United States District
Court for the District of Hawaii

Saturday, December 20, 1947

[Title of Causes.]

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Mr. Michiro Watanabe and Miss

Rhoda V. Lewis, Deputy Attorneys General, Territory of Hawaii, counsel for the defendants herein. This case was called for conference re settlement of the form and substance of the amended Restraining Order.

The Court allowed the defendants herein until January 6, 1948 within which to answer.

[Title of District Court and Cause.]

STIPULATION AND ORDER JOINING
ADDITIONAL PLAINTIFFS

It is hereby stipulated by and between the parties to the above-entitled action:

1. That Bartolome Agliam, Guilherme Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Polipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Suterio Unciano, Andres Velasco, Daniel Kaopuiki, are the defendants named in that certain criminal complaint number 101 filed in the District Court of Lanai, County of

Maui, Territory of Hawaii, a copy of which is attached hereto and marked Exhibit "F".

2. That said criminal complaint (Exhibit "F") arose out of the same incident, occasion, occurrence or series of occurrences, at the same time and place, as that involved in the complaint against Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basilio Arruiza, Midori Ota and Shigeyuki Matsuura, being the complaint attached to the verified complaint herein as Exhibit "D" thereof.

3. That said individuals named in paragraph 1 of this stipulation were on September 16, 1947 committed by the Acting Magistrate, Lanai District Court, to await the action of the Grand Jury of the Second Judicial Circuit, a copy of the decision so committing them being hereto attached as Exhibit "G".

4. That said Grand Jury at the date of filing of the complaint herein (December 1, 1947) was composed of the same Grand Jurors as are named as defendants in the above entitled action.

5. That the individuals named in paragraph 1 of this stipulation may be and hereby are joined as additional plaintiffs in the above entitled action, and that the complaint herein shall be and hereby is amended:

a. By amending the title of the action so as to add thereto the names of said additional plaintiffs.

b. By adding to the complaint herein, as paragraphs XIX to XXII inclusive, paragraphs 1 to 4 of this stipulation.

6. That all proceedings and orders heretofore made herein shall be binding upon and applicable to the additional plaintiffs.

Dated: Honolulu, T. H., December 31st, 1947.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,
GLADSTEIN, ANDERSEN,
RESNER & SAWYER,

/s/ HERBERT RESNER,

Attorneys for Plaintiffs and
Additional Plaintiffs.

/s/ RHODA V. LEWIS,

Assistant Attorney General
Attorney for Defendants.

It is so ordered December 31, 1947.

/s/ D. E. METZGER,

U. S. District Judge.

[Endorsed]: Filed Dec. 31, 1947.

[Title of District Court and Cause.]

AFFIDAVIT OF HARRIET BOUSLOG

Territory of Hawaii,

City and County of Honolulu—ss.

Harriet Bouslog, being first duly sworn deposes and says; that she is one of the attorneys for the plaintiffs herein; that on December 31, 1947 a Stipu-

lation and Order Joining Additional Plaintiffs was filed herein; that affiant is informed and believes and therefore states that the citizenship and race of each of said additional plaintiffs is as follows:

Guillermo Alboro Jr., U.S. citizen, (Malayan-Filipino).

Domingo Basinga, Philippine citizen, (Malayan-Filipino).

Jose Carranza, Philippine citizen, (Malayan-Filipino).

Daniel Casil, Philippine citizen, (Malayan-Filipino).

Honorio Collado, Philippine citizen, (Malayan-Filipino).

Mariano Dugay, Philippine citizen, (Malayan-Filipino).

Saturnino Gaspar, Philippine citizen, (Malayan-Filipino).

Victor Guillermo, Philippine citizen, (Malayan-Filipino).

Simon Hermano, Philippine citizen, (Malayan-Filipino).

Pablo Pineda, Philippine citizen, (Malayan-Filipino).

Norberto Quiton, Philippine citizen, (Malayan-Filipino).

Melicio Reutorio, Philippine citizen, (Malayan-Filipino).

Alipio Sajor, Philippine citizen, (Malayan-Filipino).

Jose Sotelo, Philippine citizen, (Malayan-Filipino).

Ignacio Sumagit, Philippine citizen, (Malayan-Filipino).

Sotero Unciano, Philippine citizen, (Malayan-Filipino).

Andres Velasco, Philippine citizen, (Malayan-Filipino).

Daniel Kaopuiki, U. S. citizen, (Polynesian-Hawaiian).

Lono Pokipala, U. S. citizen, (Polynesian-Hawaiian).

George Ramaila, U. S. citizen, (Malayan-Filipino).

Eusticio Hubin, U. S. citizen, (Malayan-Filipino).

Jack Narciso Sipe, U. S. citizen, (Malayan-Filipino).

Kazuichi Hashimoto, U. S. citizen, (Mongolian-Japanese).

Rocky Honda, U. S. citizen, (Mongolian-Japanese).

Kenneth Matsumoto, U. S. citizen, (Mongolian-Japanese).

Hiroshi Oshiro, U. S. citizen, (Mongolian-Japanese).

Mitsuyuki Oyama, U. S. citizen, (Mongolian-Japanese).

Itsuo Shimizu, U. S. citizen, (Mongolian-Japanese).

Ryoji Shimizu, U. S. citizen, (Mongolian-Japanese).

Nobuteru Tomita, U. S. citizen, (Mongolian-Japanese).

Sam Shin, U. S. citizen, (Mongolian-Polynesian-Korean-Hawaiian).

Abraham Makekau, U. S. citizen, (Mongolian-Polynesian-Chinese-Hawaiian).

Vicente Saloricman, U. S. citizen, (Malayan-Filipino).

Yoshio Ginoza, U. S. citizen, (Mongolian-Japanese).

Masao Gima, U. S. citizen, (Mongolian-Japanese).

Further affiant sayeth not.

/s/ HARRIET BOUSLOG.

Subscribed and sworn to before me this 6th day of January, 1948.

[Seal] /s/ EILEEN N. FUJIMOTO,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires July 31, 1951.

[Endorsed]: Filed Jan. 7, 1948.

[Title of District Court and Cause.]

MOTION FOR MORE DEFINITE STATEMENT. MOTION TO DISMISS ACTION AND FOR SUMMARY JUDGMENT

Come now the defendants above named and pursuant to Rules 10(b), 12 and 56 of the Rules of Civil Procedure move this Honorable Court as follows:

I.

Defendants move the Court for an order requiring plaintiffs to make a more definite statement as to certain matters in the complaint as amended, to wit:

1. Paragraph VIII of the complaint reads as follows:

“VIII.

“That from July 10, 1947, to and including July 15, 1947, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian pineapple industry. That the individual plaintiffs, other than Kawano, and the various local unions of the ILWU having members employed in the pineapple industry were on strike against the pineapple industry, seeking to improve their wages, hours and conditions of employment. That in connection with publicizing the facts of said labor dispute the plaintiffs herein during said times did engage in certain lawful, peaceful and constitution-

ally protected activities of speech, press and assemblage and of peaceful picketing.”

The last sentence of said paragraph does not inform the defendants at what particular time or times during the period July 10, 1947 to and including July 15, 1947 they were engaged in peaceful picketing, and defendants desire the particulars thereof as to each individual plaintiff (other than Kawano), in relation to the time of occurrence of the events alleged in the criminal complaint against him, which criminal complaint is incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibits D and E; paragraph 1 of the stipulation of December 31, 1947, incorporating Exhibit F).

2. Paragraph XVI of the complaint reads as follows:

“XVI.

“That the hearings referred to in Paragraph XIII, wherein plaintiffs attempted to challenge, disqualify and dismiss said Grand Jury, were unfair and inequitable in that the said Judge Cristy deprived plaintiffs of, and refused to permit plaintiffs to have, a full, fair and impartial hearing on their said motions and challenges. That the said Judge Cristy had prejudged and predetermined said motions and challenges and the issues in said cause. That the record made before the said Judge Cristy, the comments of the said judge during the course of said hearings, and the opinion rendered by the said judge at the conclusion of the said

hearings, which said record is incorporated herein by this reference and hereafter will be filed as an exhibit with this court, establish the fact that plaintiffs were denied a full, fair and impartial hearing in connection with said motions and challenges. That it is necessary and imperative that this Court assume jurisdiction in the matter in order that plaintiffs shall have an impartial, representative and democratic Grand Jury, and that they shall be allowed a full, fair and impartial hearing in connection with their said challenges and motions. That by his actions as herein described the said Judge Cristy deprived plaintiffs of the kind of an impartial hearing to which they are entitled under Section 9812 of the Revised Laws of Hawaii, 1945."

Said paragraph does not inform the defendants wherein the Honorable Albert M. Cristy prejudged or predetermined the motions and challenges to the Grand Jury of the Second Circuit, Territory of Hawaii, or wherein plaintiffs were denied a full, fair and impartial hearing. Defendants desire the particulars thereof, with references to the record in the matter of said Grand Jury motions and challenges.

II.

Defendants move this Court for an order requiring plaintiffs to make a more definite statement of their several claims, so as to state in a separate count each claim founded upon a separate transaction or occurrence, to wit:

1. To state in a separate count the alleged claim

of the plaintiffs Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes (named in Exhibit E of the complaint) for relief against the enforcement of the unlawful assembly and riot statute, and to specify therein the defendants against whom such relief is claimed.

2. To state in a separate count the alleged claim of the remaining individual plaintiffs (named in Exhibit D of the complaint and Exhibit G added thereto by the stipulation of December 31, 1947, and not including Jack Kawano), for relief against the enforcement of the unlawful assembly and riot statute, and to specify therein the defendants against whom such relief is claimed.

3. To state in a separate count the alleged claim of the plaintiff unions and Jack Kawano for relief against the enforcement of the unlawful assembly and riot statute, and to specify therein the defendants against whom such relief is claimed.

4. To state in a separate count the alleged claim of the plaintiffs for relief on account of the alleged selection and composition of the Grand Jury, and to specify therein the defendants against whom such relief is claimed.

III.

Defendants move the Court to dismiss the action for lack of jurisdiction over the subject matter, because the matter in controversy does not exceed three thousand dollars exclusive of interest and costs as to each of the plaintiffs or any of them, and specifically:

1. The allegations of the complaint relating to the jurisdictional amount are not well founded in law.

2. The allegations of the complaint relating to the jurisdictional amount are not sufficient definite and certain.

3. Defendants controvert, as to each and every plaintiff, the allegations of the complaint concerning the jurisdictional amount, and hereby put said plaintiffs to their proof thereof.

4. Further, defendants show by the affidavit of C. C. Cadagan, being Defendants' Exhibit A filed on December 8, 1947 with the return to the order to show cause herein and made a part hereof by reference, that the allegations of the amended complaint that for the plaintiffs to stand trial on the charges against them would result in the loss of their employment and housing accommodations, are untrue.

IV.

Defendants move the Court to dismiss so much of the complaint as purports to allege, in favor of the plaintiffs Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes (named in Exhibit E of the complaint), a claim for relief against the enforcement of the unlawful assembly and riot statute, and defendants move for summary judgment thereon, on the following grounds:

1. The complaint fails to state a claim in favor of such plaintiffs upon which such relief can be granted.

2. It appears upon the face of the complaint that it seeks to enjoin and restrain a criminal prosecution pending against such plaintiffs in the Circuit Court, Second Circuit, of the Territory of Hawaii.

3. Any stay of criminal proceedings pending in a court of the Territory is contrary to the provisions of the federal statutes applicable thereto.

4. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

5. The complaint fails to show that said plaintiffs are threatened with more than one criminal proceeding, or that anything at all is involved other than the possibility of prosecution for an alleged violation of the criminal laws of the Territory of Hawaii, with respect to matters which have already occurred.

6. The complaint fails to show that the Grand Jury of the Second Judicial Circuit has heard the

evidence against said plaintiffs or made any determination as to whether it will present an indictment against them under the unlawful assembly and riot statute of the Territory. As a matter of law, both plaintiffs and defendants are without knowledge or information sufficient to allege whether the Grand Jury would or would not present such indictment upon hearing the evidence.

7. No loss of employment or housing is involved, as appears from the affidavit of C. C. Cadagan, being Defendants' Exhibit A filed on December 8, 1947 with the return to the order to show cause herein and made a part hereof by reference.

8. The complaint fails to show that the prohibitions contained in said unlawful assembly and riot statute will impose on the plaintiffs great and immediate irreparable injury with respect to their rights to improve employment conditions or any other rights.

9. The complaint fails to show that said plaintiffs are guiltless of wrongful conduct, or that they come into equity with clean hands.

10. The complaint fails to show that said plaintiffs were peacefully picketing during the occurrence of the events alleged in the criminal complaint against them, which criminal complaint is incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibit E).

11. The complaint shows on its face that the defendant prosecuting officers of the Territory of

Hawaii do not propose to prosecute said plaintiffs for peaceful picketing or peaceable assembly, or for the exercise of their constitutional rights of free speech, press, or assemblage.

12. The complaint shows on its face that said unlawful assembly and riot statute does not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statute is not vague or indefinite, and that said statute is constitutional and valid.

13. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii vs. Joseph Kaholokula, et al., No. 2657", a copy of which was filed on December 8, 1947 as Defendants' Exhibit F and is made a part hereof by reference, said unlawful assembly and riot statute as construed by the Supreme Court of Hawaii does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

14. As shown by Defendants' Exhibit G filed December 10, 1947 on the return to the order to show cause and by Defendants' Exhibit I, hereto annexed, said exhibits being made a part hereof by reference, said plaintiffs, after waiving preliminary examination, were committed to the Circuit Court of the Second Judicial Circuit to await the action of the Grand Jury, having been arrested and

arraigned on a complaint sworn to by Assistant Chief of Police Andrew S. Freitas, based on evidence tending to show as follows:

That on the morning of July 15, 1947, at the hour of five o'clock a.m. said plaintiffs, together with other persons, the total numbering in excess of twenty-five, went to the home of Jacob Kalua Nahinu and Sam Kalua, at Lanai City, Island of Lanai, County of Maui, in the Second Judicial Circuit of the Territory of Hawaii, and then and there, on their home premises, said Jacob Kalua Nahinu and Sam Kalua were assaulted and beaten by some of the persons so congregated, and that the plaintiffs were among the persons who so assaulted and beat Jacob Kalua Nahinu and Sam Kalua, and that Jacob Kalua Nahinu was injured thereby.

Such evidence ought of right to be brought before and heard by the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii, and no constitutional or other right of the plaintiffs would be violated should the Grand Jury consider the unlawful assembly and riot statute in connection therewith.

15. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or proposed to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the performance of their duties is an action against the

Territory of Hawaii, which has not consented to be sued thereon.

V.

Defendants move the Court to dismiss so much of the complaint as purports to allege in favor of the remaining individual plaintiffs (named in Exhibit D of the complaint and Exhibit G added thereto by the stipulation of December 31, 1947, and not including Jack Kawano), a claim for relief against the enforcement of the unlawful assembly and riot statute, and defendants move for summary judgment thereon, on the following grounds:

Grounds 1 to 8 inclusive are the same as are set forth in part IV hereof, and they are incorporated herein by reference.

9. The complaint fails to show that said plaintiffs are guiltless of wrongful conduct, or that they come into equity with clean hands.

10. The complaint fails to show that said plaintiffs were peacefully picketing during the occurrence of the events alleged in the criminal complaints against them, which criminal complaints are incorporated by reference in the complaint herein (Complaint, paragraph IX, incorporating Exhibit D; stipulation of December 31, 1947 incorporating Exhibit F).

11. The complaint shows on its face that the defendant prosecuting officers of the Territory of Hawaii do not propose to prosecute said plaintiffs for peaceful picketing or peaceable assembly, or

for the exercise of their constitutional rights of free speech, press, or assemblage.

12. The complaint shows on its face that said unlawful assembly and riot statute does not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statute is not vague or indefinite, and that said statute is constitutional and valid.

13. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of Hawaii vs. Joseph Kaholokula, et al., No. 2657", a copy of which was filed on December 8, 1947 as Defendants' Exhibit F and is made a part hereof by reference, said unlawful assembly and riot statute as construed by the Supreme Court of Hawaii does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

14. As shown by Defendants' Exhibit H filed December 10, 1947 on the return to the order to show cause, and by Defendants' Exhibits J and K, hereto annexed, all said exhibits being made a part hereof by reference, the plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kao-puiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeri Yagi, Basiliso Arruiza, Midori Oda, and Shigayuki Matsuura, after waiving preliminary examination, and the remaining plaintiffs after pre-

liminary examination, were committed to the Circuit Court of the Second Judicial Circuit to await the action of the Grand Jury, having been arrested and arraigned on complaints sworn to by Assistant Chief of Police Andrew S. Freitas. Said complaints, and in the case of the plaintiffs who did not waive preliminary examination, said commitment, were based on evidence tending to show as follows:

That on July 14, 1947 said plaintiffs, with divers other persons, the total number exceeding 125, assembled together at Kaumalapau Wharf on the Island of Lanai, County of Maui in the Second Judicial Circuit of the Territory of Hawaii. That at about 4:10 p.m. on said day a pineapple barge arrived at the said wharf and was secured at the dock, whereupon certain employees of Hawaiian Pineapple Company, Limited, began operations to load such barge with pineapples then on the dock. That employees so engaged were Anthony Fernandes, who started to operate the crane, Frederick S. Johnson, Jerome Harrington, Carl Kluge and Charles Marquez who mounted the pineapple bins, and Buck Manriki who remained on the table alongside of the pineapple bins.

That at about this time the persons assembled, who previously had been standing or sitting near the rail at the entrance to the dock began to form into two rows or lines with eight union "picket policemen" in front of them. That suddenly Diego Barbosa, one of the plaintiffs herein and one of

said "picket policemen", started to run toward the pineapple bins, at the same time yelling and motioning for the others who had lined up as aforesaid to follow him. That the men who had lined up and others who joined them rushed forward toward such pineapple bins and toward the men there employed, yelling, and that the number of men in the rush exceeded one hundred.

That many of those who so rushed forward mounted the tier of bins where Johnson and Harrington were at work, and that Johnson was pushed off this tier of bins and Harrington was severely beaten about the head and body by one or more of such persons.

That some of the persons who so rushed forward climbed onto the crane and Fernandez at the same time jumped off onto the dock and ran, closely followed by twelve to fifteen persons who caught him and began to beat and assault him. That Fernandes then jumped to the lower portion of the wharf where three of such assailants followed him and continued in an attempt to strike him. That Fernandes then being unable to otherwise escape from his assailants, fell or jumped into the waters of Kaumalapau Bay and while swimming and attempting to reach a place of safety was further attacked by his assailants by their throwing and attempting to strike him with pineapples.

That when the rush or charge of the persons assembled as aforesaid commenced and while it was going on the police present yelled and called out

loudly to the crowd to stop and return to the entrance where they had previously gathered, but were unable to stop them. That after a period of approximately four or five minutes from the time they first began such charge all of the persons who had been engaged in such charge and in the actions above set forth ceased such activities and returned back to the entrance of the dock where they had been waiting previous to such charge.

That among those present who rushed forward and did or aided or countenanced others in doing the acts and things above set forth were the plaintiffs named in Exhibit D of the complaint and in Exhibit G added thereto by the stipulation of December 31, 1947.

Such evidence ought of right to be brought before and heard by the Grand Jury of the Second Judicial Circuit of the Territory of Hawaii, and no constitutional or other rights of the plaintiffs would be violated should the Grand Jury consider the unlawful assembly and riot statute in connection therewith.

15. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or propose to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the performance of their duties is an action against the

Territory of Hawaii, which has not consented to be sued thereon.

VI.

Defendants move the Court to dismiss so much of the complaint as purports to allege a claim of the plaintiff unions and Jack Kawano for relief against the enforcement of the unlawful assembly and riot statute, on the following grounds:

1. The complaint fails to state a claim in favor of such plaintiffs upon which such relief can be granted.

2. Plaintiff unions are not entitled to prosecute this suit under the Civil Rights Act of the United States.

3. Courts of equity do not enjoin criminal prosecutions; criminal proceedings in the course of which and on review of which all rights and defenses may be asserted, heard and determined by the circuit and supreme courts of the Territory, and, to the extent asserted under the laws and Constitution of the United States, by the Circuit Court of Appeals of the Ninth Circuit and the Supreme Court of the United States, do not constitute a threat of irreparable injury.

4. The complaint fails to show that said plaintiffs, if they do not obtain equitable relief, will suffer great and immediate irreparable injury.

5. The allegations of the complaint do not present a justiciable controversy concerning future en-

forcement of the unlawful assembly and riot statute in cases not now pending.

6. The complaint fails to show that the union members whom plaintiffs seek to represent will be subjected to further prosecutions under said unlawful assembly and riot statute, other than the pending criminal proceedings.

7. The complaint fails to show that the defendant prosecuting officers of the Territory of Hawaii propose to prosecute plaintiffs' members for peaceful picketing or peaceable assemblage, or for the exercise of their constitutional rights of free speech, press, or assemblage.

8. No allegations showing that the plaintiffs' members are subject to further prosecutions under said unlawful assembly and riot statute could be made without showing intent to engage in wrongful conduct, depriving the plaintiffs of the right to equitable relief under the maxim that "he who comes into equity must come with clean hands".

9. The complaint shows on its face that said unlawful assembly and riot statute does not purport to apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, that said statute is not vague or indefinite, and that said statute is constitutional and valid.

10. As shown by the decision of the Supreme Court of Hawaii in the case entitled "Territory of

Hawaii vs. Joseph Kaholokula, et al., No. 2657'', a copy of which was filed on December 8, 1947 as Defendants' Exhibit F and is made a part hereof by reference, said unlawful assembly and riot statute as construed by the Supreme Court of Hawaii does not apply to peaceful picketing or peaceable assemblage or any of the rights which plaintiffs allegedly seek to protect, and said law is not vague or indefinite.

11. The complaint fails to show that the defendants have acted or propose to act beyond the scope of their authority, or that they have made or propose to make any oppressive or malicious use of the legal process of the Territory, or that they are not acting in good faith in the performance of their duties as officers of the Territory of Hawaii; an action against them seeking to restrain the performance of their duties is an action against the Territory of Hawaii, which has not consented to be sued thereon.

VII.

Defendants move the Court to dismiss so much of the complaint as purports to allege a claim for relief on account of the alleged selection and composition of the 1947 Grand Jury, and defendants move for summary judgment thereon, on the following grounds:

1. The complaint fails to state a claim upon which such relief can be granted.

2. The complaint fails to allege or show any in-

validity in the laws governing the selection and composition of the Grand Jury.

3. The Court judicially knows that pursuant to section 9638 of the Revised Laws of Hawaii 1945 a new term of court commenced in the Second Judicial Circuit of the Territory of Hawaii on the second Monday in January, 1948, to wit, January 12, 1948, and that the 1947 Grand Jury list has been dissolved by efflux of time and a new grand jury list has been prepared and returned by the jury commission. By reason of the temporary restraining order issued herein on December 10, 1947 the 1947 Grand Jury was prevented from hearing the charges against the plaintiffs and the plaintiffs thereby mooted their claim for an adjudication as to the validity of the selection and composition of said 1947 Grand Jury. Said alleged issue now is moot and not justiciable.

VIII.

Defendants named individually and as Grand Jurors of the County of Maui move the Court to dismiss the action as to them, on the following grounds:

1. The alleged claim against them is moot.
2. The complaint fails to state a claim for relief against them.
3. The grand jurors of a circuit court of the Territory of Hawaii cannot properly be made parties to a proceeding in which an injunction is sought to

restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against said grand jurors.

IX.

Defendant Cable A. Wirtz, individually and as Circuit Court Judge of the County of Maui, moves the Court to dismiss the action as to him, on the following grounds:

1. The complaint fails to state a claim for relief against him.

2. A judge of a circuit court of the Territory of Hawaii cannot properly be made party to a proceeding in which an injunction is sought to restrain and stay proceedings pending in such circuit court, and this Court has no jurisdiction to issue an injunction against a judge of a circuit court of the Territory of Hawaii.

X.

Defendants Cable A. Wirtz, Augustine Pombo and Claude E. Chatterton, individually and as Jury Commissioners of the County of Maui, move the Court to dismiss the action as to them on the following grounds:

1. The alleged claim for relief on account of the alleged selection and composition of the 1947 Grand Jury is moot.

2. The complaint fails to state a claim for relief against them.

XI.

Defendant Jean Lane, individually and as Chief of Police of the County of Maui, moves the Court to dismiss the action as to him on the ground that it fails to state a claim for relief against him.

Wherefore, defendants pray:

- a. That the action be dismissed.
- b. That summary judgment be entered for the defendants.
- c. That if the action be not wholly dismissed, or if summary judgment be not entered for the defendants upon the whole case, that the action be dismissed as to certain of the defendants, and that plaintiffs be required to make certain matters in the complaint more definite, and that plaintiffs be required to make a more definite statement of their several claims so as to state in a separate count each claim founded upon a separate transaction or occurrence.

Dated at Honolulu, T. H., this 14th day of January, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

/s/ WENDELL F. CROCKETT,

By RVL.

Deputy County Attorney, County of Maui. Attorneys for Defendants.

[Title of District Court and Cause.]

To Harriet Bouslog, Myer C. Symonds, Gladstein, Andersen, Resner and Sawyer, and Herbert Resner, Attorneys for the Plaintiffs.

Please take notice that the foregoing motions will be presented before the three-judge court convened in accordance with section 266 of the Judicial Code, as provided by order of the Honorable D. E. Metzger, judge of the above-entitled court, made December 10, 1947, immediately upon the convening of said court for the hearing of this cause at the Federal Building, Honolulu, Territory of Hawaii, or as soon thereafter as counsel can be heard.

Dated at Honolulu, T. H., this 14th day of January, 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General.

/s/ WENDELL F. CROCKETT,

By RVL.

Deputy County Attorney, County of Maui. Attorneys for Defendants.

EXHIBIT I

AFFIDAVIT OF ANDREW S. FREITAS

Assistant Chief of Police

Re: Assault on Jacob Nahinu and Sam
Kalua

July 15th, 1947

Territory of Hawaii,
County of Maui—ss.

Andrew S. Freitas being first duly sworn on oath deposes and says that he is the Assistant Chief of Police for the County of Maui, Territory of Hawaii;

That on or about the 15th day of July, 1947, affiant was detailed to the Island of Lanai, together with other police officers from headquarters at Wailuku for the purpose of preserving the peace and preventing any disturbance among the employees of Hawaiian Pineapple Co. Ltd., who were then on strike.

That on the morning of July 15, 1947, at about the hour of 5:30 a.m. a report was received at the police station at Lanai City, Lanai, that 2 employees of the said pineapple company, to wit, Jacob Nahinu and Sam Kalua, had been severely beaten at about 5 a.m. that morning at their homes while preparing to go to work as employees of the said Company; that at or about that time affiant examined Jacob Nahinu, one of the persons alleged to have been beaten and observed that he had re-

ceived a severe cut or wound on his forehead which was still bleeding; that at or about the same time affiant also examined Sam Kalua, the other person alleged to have been assaulted and beaten as aforesaid, and observed that he did not have on his body any visible injuries but that his shirt was covered with mud.

That affiant was informed by the said Nahinu that the persons whom he had recognized during the time of such assault were, Mariano Baldua, Abraham Makekau and Antonio Mendes;

That affiant directed that the matter be fully investigated by police officers under his direction and control and that pursuant to such investigation evidence was obtained tending to show that Mariano Baldua, Abraham Makekau, Antonio Mendes, Narcisso Sipe and Elpidio Siruet together with other persons, the total number assembled exceeding twenty-five, went to the home of Jacob Kalua Nahinu and Sam Kalua at about the hour of 5:00 a.m. and that there, on their home premises, Jacob Kalua Nahinu and Sam Kalua were assaulted and beaten by some of the persons so congregated. That the evidence further tended to show that the persons who so assaulted and beat said Jacob Nahinu and said Sam Kalua included the said Mariano Baldua, Abraham Makekau, Antonio Mendes, Narcisso Sipe, and Elpidio Siruet. That thereupon affiant swore to a complaint before the Acting District Magistrate of Lanai charging the said Mariano Baldua, Abraham Makekau, Antonio Mendes, Narcisso

Sipe and Elpidio Siruet with the offense of riot, which charge, affiant is informed, is still pending in the Circuit Court of the Second Circuit, to which the said defendants were committed.

[Seal] /s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 8th day of January, 1948.

/s/ WENDELL F. CROCKETT,
Notary Public, Second
Circuit, T. H.

My Commission expires June 30, 1949.

EXHIBIT J

AFFIDAVIT OF ANDREW S. FREITAS
Assistant Chief of Police

Re: Incident at Kaumalapau Wharf

July 14, 1947

Territory of Hawaii,
County of Maui—ss.

Andrew S. Freitas, being first duly sworn on oath deposes and says that he is the Assistant Chief of Police of the County of Maui, Territory of Hawaii, and that on the 14th day of July, 1947, he was on the Island of Lanai with other police officers detailed from headquarters at Wailuku, to assist in maintaining order during a strike which was then being carried on by workers employed by Hawaiian Pineapple Company Limited;

That at about the hour of 3:05 p.m. on the said July 14th, 1947, affiant arrived at Kaumalapau Wharf on the said Island of Lanai, accompanied by other police officers and that between the time of his arrival and 4:10 p.m. a considerable number of striking employees arrived at said wharf, the number as estimated by affiant being in excess of 125;

That at about 4:10 p.m. a barge arrived at the said harbor and was secured at the dock whereupon certain employees of said Hawaiian Pineapple Co. Ltd. began operations to load such barge with pineapples which were then on the dock; that the employees so engaged being Anthony Fernandes, who started to operate the crane, Frederick S. Johnson, Jerome Harrington, Carl Kluge, Charles Marquez, who mounted the pineapple bins, and Buck Manriki, who remained on the table alongside of the pineapple bins.

That at about this time the strikers, who previously had been standing or sitting near the rail, began to form into two rows or lines with 8 Union "Picket Policemen" in front of them; that suddenly a Union "Picket Policeman" whom affiant later identified as Diego Barbosa, started to run towards the pineapple bins, at the same time the said Diego Barbosa was yelling and motioning for the others who had lined up as aforesaid, to follow him; that the men who had lined up and others who joined them, rushed forward toward such pine-

apple bins, and many of them, including the said Diego Barbosa, mounted such bin where the said Johnson and Harrington were at work; that affiant saw the said Barbosa bending over and apparently beating and striking some one, though affiant could not at that time determine who such person was.

That affiant then looked in the direction of the crane which Anthony Fernandez was attempting to operate and saw one, John Maile, climb up on to such crane and Fernandez at the same time jump off onto the dock; that Fernandez then ran towards affiant, closely followed by 12 or 15 persons who, on catching him, began to mob, beat and assault him, the said Fernandez; that Fernandez then moved backwards in an effort to escape from such assailants and jumped to the lower portion of the wharf where 3 of such assailants followed him and continued in an attempt to strike and assault him; that the said Fernandez then being unable to otherwise escape from his assailants fell or jumped into the waters of Kaumalapau Bay and while swimming and attempting to reach a place of safety was further attacked by his assailants by their throwing and attempting to strike him with pineapples.

That when the rush or charge of the persons assembled as aforesaid commenced and while it was going on affiant yelled and called out loudly to the crowd to stop but that such yelling had no effect.

That affiant constantly endeavored to hold back the crowd and to get them to leave the dock and

return to the entrance of the same where they had previously gathered but was unable to exercise any control of such persons; that after a period of approximately 4 or 5 minutes from the time they first began such charge all of the said persons who had been engaged in such charge and actions as hereinabove set forth ceased such activities and returned back to the stone wall at the entrance of the dock where they had been standing and waiting previous to such charge.

That when quiet had been restored affiant made a check to ascertain what injuries, if any, had been inflicted on any persons and found that Jerome Harrington had been severely beaten about the head and body;

That Fernandez, other than being drenched and having his shirt torn, had suffered no visible bodily injuries;

That numerous pineapple bins had been broken open and large quantities of pineapples had been scattered and spilled about the dock and thrown into the waters of the bay;

That affiant immediately proceeded to make a police investigation of such incident to ascertain the names and identity of the persons taking part therein or responsible therefor, and that he was informed that Diego Barbosa, John Maile, Victor Degano, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda and Shigeyuki Mat-

suura, were among those present who did or aided and countenanced others in doing the acts and things hereinabove set forth.

That upon such investigation and the evidence obtained thereby, affiant swore to a complaint before the Acting District Magistrate of Lanai charging such persons, together with others, whose names were then unknown to affiant, with a violation of the laws of the Territory of Hawaii, to wit, a riot, which charge affiant is informed is still pending in the Circuit Court of the Second Circuit, to which said defendants were committed.

And affiant further sayeth not.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 29th day of December, 1947.

[Seal] /s/ WENDELL S. CROCKETT,

Notary Public, Second

Circuit, T. H.

My Commission Expires June 30, 1949.

EXHIBIT K

In the Circuit Court of the Second Judicial
Circuit, Territory of Hawaii

Criminal No. 2419—Riot

THE TERRITORY OF HAWAII,

vs.

BARTOLOME AGLIAM, et al,

Defendants.

DEPUTY CLERK'S CERTIFICATE

Territory of Hawaii,
County of Maui—ss.

I, D. W. Tallant, Deputy Clerk of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, which Court is a Court of Record having a Seal, Do Hereby Certify that the following documents herewith enumerated, and hereto attached, viz:

1. Copy of Magistrate's Certificate;
2. Copy of Complaint and Warrant of Arrest;
3. Copy of Transcript of the Evidence; and
4. Copy of Decision;

are all full, true and accurate copies of said documents now on file in the Office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii, in the above-entitled cause, and that was filed

Exhibit K—(Continued)

by the District Magistrate of the District Court of Lanai, County of Maui.

Dated: Wailuku, Maui, T. H., December 29th, 1947.

[Seal] /s/ D. W. TALLANT,
Deputy Clerk, Second Circuit Court, Territory of
Hawaii.

Copy

District Court of Lanai, County of Maui
Territory of Hawaii

Complaint

Andrew S. Freitas, first being duly sworn, says:
That Bartolome Agliam, Henry Aki, Guilherme Alboro, Mariano Andres, Domingo Basinga, Mariano Beldua, Valeriano Bugtong, Jose Carranza, Daniel Casil, Honorio Collardo, Lorenzo Del Rosario, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, George Kaohalahala, David Kaopuiki, Daniel Kaopuiki, Abraham Makekau, Kenneth Matsumoto, Casimero Millare, Shigeto Minami, Tiborcio Nesperas, Daniel Niberas, Daniel Norseda, Hiroshi Oshiro, Masahide Oshiro, Mitsuyuki Oyama, Heraldo Pacada, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Mele-

Exhibit K—(Continued)

cio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimzu, Sam Shin, Jack Narcisso Sipe, Elpidio Siruet, Jose Sotelo, Ignacio Sumagit, Gerardo Taal, Tejiro Tengan, Francito Tocason, Nobuteru Tomita, Sutero Unciano, Pedro Unida, Pablo Vea, Andres Velasco, in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to wit the 14th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror and tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries to and upon Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington, and others and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into said Anthony D. Fernandez, Buck Masuto Manriki, Frederick S. Johnson, Jerome Harrington and others and thereby endangering the life, limb, health and liberty of them the said Anthony D. Fernandez, Buck Masuo Manriki, Frederick S. Johnson, Jerome Harrington and

Exhibit K—(Continued)

others, contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 1st day of August, A.D. 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

Warrant of Arrest

The Territory of Hawaii:

To the High Sheriff, his Deputy; the Chief of Police of the County of Maui, or any Police Officer in the district of Lanai, County of Maui:

You Are Hereby Commanded on the information of Andrew S. Freitas verified by oath, forthwith to arrest and take the bodies of:

Bartolome Agliam, Henry Aki, Guilhermo Alboro, Mariano Andres, Domingo Basinga, Mariano Beldua, Valeriano Bugtong, Jose Carranza, Daniel Casil, Honorio Collardo, Lorenzo Del Rosario, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi, Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, George Kaohalahala, David Kaopuiki, Daniel Kaopuiki, Abraham Makekau, Kenneth Matsumoto, Casimero Millare, Shigeto Minami, Tiborcio Nesperas, Daniel Niberas, Daniel Norseda, Hiro-

Exhibit K—(Continued)

shi Oshiro, Masahide Oshiro, Mitsuyuki Oyama, Herald Pacada, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Elpidio Siruet, Jose Sotele, Ignacio Sumagit, Gerardo Taal, Teijiro Tengan, Francito Tocason, Nobuteru Tomita, Suterio Unciano, Pedro Unida, Pablo Veas, Andres Velasco, accused of Riot as set forth in the above complaint, if they can be found, and forthwith have their bodies before the District Magistrate of Lanai, County of Maui, at his Court Room at any time between the hours of 9:00 a.m. and 2:00 p.m. of the 6th day of August, A.D. 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

Bail for Pablo Pineda, one of the defendants above named, is hereby set in the sum of \$1,000.00, and for all other defendants above named bail is set at \$100.00, each.

Dated at Wailuku, Maui, Territory of Hawaii, this first day of August, A.D. 1947.

/s/ CABLE A. WIRTZ,

Judge, Circuit Court, Second
Circuit, T. H.

Executed the within Warrant on the persons of Pablo Pineda, Herald Pacada, Melicio Riutorio,

Exhibit K—(Continued)

Andres Velasco, Mariano Beldua, Guilherme Alboro, Jr., Kenneth Tatsumi Matsumoto, Jose Carronza, Itsuo and Chuck Shimizu, Hiroshi Oshiro, Pedro P. Unida, Lorenzo Del Rosario, Casimero Millare, Ignacio Sumagit, Daniel Narcida, Martin Lono Pokipala, George Ramaila, Daniel Kaopuiki, Jr., Sam Shin, Henry Kau Aki, Narcisso Sipe, Eusticio Hubin, Vicente Companio Saloricman, Simon Hermano, Honrio Collado, Elpidio Siruet, Abraham Makekau, George Kahoohalahala, Nobuo Honda, Alipio Sajor, Norberto Quiton, Yoshio Ginoza, Bartolome Agleam, Mitsuyuki Oyama, Pablo Vea, Transito Tacason, Shigeto Minami, Valeriano Bugtong, Daniel Casil, Tiborcio Nesperos, Nobuteru Tomita, Mariano Dugau, Sotero Unciano, Saturnino Gaspar, Masao Gima, Victor Guillermo, Jose Sotelo, Masahide Oshiro, Riyoji Shimizu, Teijiro Tengan, Mashahide Oshiro, Riyoji Shimizu, Teijiro Tengan, Domingo Basinga, therein named, on this 4th day of August, 1947.

/s/ K. TAKAHAMA,
Police Officer.

Executed the within Warrant on the person of Kazuichi Hashimoto.

Named therein, this 5th day of August, 1947.

/s/ K. TAKAHAMA,
Police Officer.

Exhibit K—(Continued)

In the District Court of Lanai, County of
Maui, Territory of Hawaii

Case No. 101—Riot

THE TERRITORY OF HAWAII,

Plaintiff,

vs.

BARTOLOME AGLIAM, et al,

Defendant.

MAGISTRATE'S CERTIFICATE

Territory of Hawaii,

County of Maui—ss.

I, Young Wa, Acting District Magistrate of the District Court of Lanai, County of Maui, Territory of Hawaii, do hereby certify that the documents hereto attached, to wit: Copy of Complaint, Copy of my record showing the charges and proceedings against the above named defendants, also one album containing Prosecution's Exhibits "B," "G," "D," "E" and three rolls of film, Prosecution's Exhibits "A," "F," "C," (and cash bond in the sum of \$4,500.00), are true and faithful copies of proceedings had in this Court and are herewith sent to the Circuit Court of the Second Judicial Circuit, County of Maui, Territory of Hawaii.

In Witness Whereof, I have hereunto set my hand this 16th day of September, A.D. 1947.

/s/ YOUNG WA,

Acting District Magistrate, Lanai District Court,
County of Maui, T. H.

Filed Sept. 17, 1947.

Exhibit K—(Continued)

In the District Court of Lanai, County of Maui,
Territory of Hawaii

Case No. 101

Wednesday, August 6, 1947

TERRITORY OF HAWAII,

Plaintiff,

vs.

BARTOLOME AGLIAM, et al,

Defendants.

RIOT

Counsel for the Plaintiff, Mr. Frank Crockett.

Counsels for the Defendants, Mrs. Harriet Bouslog and Mr. Harold Duponte.

The Prosecution reads the charge to the defendants.

Prosecution: Before they waive preliminary hearing, court please, the prosecution asks that Tei-jiro Tengan, Casimero Millare, Masahide Oshiro and Henry Aki, be dismissed from this case.

The Court: Tei-jiro Tengan, Casimero Millare, Masahide Oshiro and Henry Aki be read as dismissed for this case.

Prosecution: Court please, the prosecution asks that the name David Kaopuiki be striked out from the complaint and the name Daniel Kaopuiki be read instead. The 2nd name is Mariano Andres, and the name Andres Velasco are the same person. His

Exhibit K—(Continued)

correct name is Andres Velasco. The 3rd person is Daniel Neberes and also Daniel Norseda refer to the same person. So his name should read as Daniel Narceda.

The Court: Let the minutes read the names as amended.

Prosecutor: There is one other change, Your Honor. The complaint has the name of Honorio Collardo as alias Gerardo Taal.

The Court: Let the minutes read that the name Honorio Collardo read as alias Gerardo Taal.

Prosecution to counsels for the defendants.

Prosecution: Do you wish to have the complaint interpreted to the defendants?

Bouslog: No, Mr. Crockett, I think they understand Mr. Crockett, whether or not it is customary here, the defendants desire a preliminary hearing now and request that the prosecution proceed with the case. I think the defendants not having been released, the prosecution should be required to proceed. (Correction made with approval of Court 4/27/48.)

Prosecution: The prosecution asks that the matter be passed over sometime when a date is convenient for having a preliminary hearing.

The Court: The court believes that the case should be continued for any convenient time for counsels. Any suggestions to make for a date that is convenient?

Exhibit K—(Continued)

Prosecution: Any date that the court sees satisfactory.

Bouslog: I have full schedule for this week and next week.

The Court: Case continued to the 22nd of August.

/s/ J. K. MEDEIROS,
District Court Clerk,

/s/ YOUNG WA,
District Magistrate.

In the District Court of Lanai, County of Maui
Territory of Hawaii

Case No. 101

THE TERRITORY OF HAWAII,
Plaintiff,

vs.

BARTOLOME AGLIAM, et al,
Defendants.

Friday, August 22, 1947

RIOT

Court convened at 10:55 a.m.

Mr. Wendell F. Crockett for the Prosecution.

Mrs. Harriet Bouslog, Counsel for Defense.

Mr. Crockett: We are ready to proceed, Court please.

Exhibit K—(Continued)

Mrs. Bouslog: We are ready to proceed.

The Court: This case was continued from the 6th.

Mrs. Bouslog: Your Honor, I think the record from the last time shows of the opposition of the Counsel for defendants over the continuance, that the statute of the Territory provides in a mandatory way when the defendants appear, the District Magistrate shall proceed to determine whether there is probable cause that the defendants have been unlawfully held. I want to be sure that the record shows this continuance was over the objection of counsel for defendants. I believe that this proceeding is entirely without authority of law and that the Prosecution or the Court have no authority to proceed at this time. However, the Court overruled the objection that I am merely preserving for the record to show the objection was made to the proceeding.

Mr. Crockett: In other words, subject to your objection, no objection to proceeding at the present time?

Mrs. Bouslog: That is right, Mr. Crockett.

Mr. Crockett: The Counsel wishes to call the roll, or stipulate that the defendants are present?

Mrs. Bouslog: All the defendants are present, Mr. Crockett.

Mr. Crockett: Call Mr. DeMello please.

Exhibit K—(Continued)

FRANCIS B. DeMELLO

Witness sworn by the Court

Direct Examination

Mr. Crockett: What is your name?

A. Francis B. DeMello.

Q. What is your occupation?

A. Lieutenant of Identification, Maui Police Dept.

Mrs. Bouslog: May it please the Court, I would like to interrupt at this time and call attention to the fact that the defendants do not understand English and every and all proceedings be translated for the benefit of the defendants.

Mr. Crockett: Court please, the decisions of the Supreme Court said such procedures are unnecessary when defendants are represented by counsel.

Mrs. Bouslog: Your Honor, that is not the correct statement of the law.

Mr. Crockett: We withdraw the objection and ask an interpreter be called. What *language* you wish it interpreted?

Mrs. Bouslog: Filipino.

(Court recessed at 10:58 a.m. Reconvened at 11:10 a.m.)

(Mrs. Lurita Viduia sworn by the Court as Filipino interpreter.)

Mr. Crockett: What is your name?

A. Francis B. DeMello.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. What is your occupation?

A. Lieutenant of Identification, Maui Police Dept.

Q. As a police officer, were you on the island of Lanai on the 14th day of July, 1947?

A. I was.

Q. Part of your duties as Lieutenant of Identification, do you take photograph or pictures of incidents of that nature? A. I do.

Q. Were you down at Kamalapau on the afternoon of July 14th? A. I was.

Q. What time did you go down there?

A. We went down about 3:30 p.m. on the 14th.

Q. Who else went with you at the time you went down?

A. Assistant Chief of Police Andrew S. Freitas, Captain of Detective John D. Seabury, officer Takahama.

Q. Was Mr. Medeiros, police officer, there also?

A. He was, he came a little after we arrived.

Q. And you know Mr. Billson? A. I do.

Q. And you know Mr. Heminger?

A. I do.

Q. Did you see them there that afternoon?

A. I did.

Q. Do you know Mr. Anthony Fernandez?

A. I do.

Q. Did you see him there that afternoon?

A. Yes.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. Do you know Mr. Harrington and a man by the name of Johnson? A. Yes.

Q. You see them there also about that time?

A. Yes.

Q. You know Mr. Marcus and Mr. Pavao?

A. I do.

Q. Did you see them there? A. Yes.

Q. And now when you arrived there at Kamalapau, you saw Mr. Fernandez, Mr. Johnson, Mr. Harrington, Pavao, you recall what they were doing when you got there?

A. We, when I say we, I mean Assistant Chief Freitas, Capt. Seabury, Takahama and myself, had convoyed a truck to the Kamalapau wharf that was operated by Mr. Johnson, and Mr. Fernandez at that time when we arrived at the dock was operating a crane that was unloading freight off the Mana that had just arrived prior to us getting to the dock.

Q. Then Mr. Harrington, what was he doing as you recall?

A. They were—I don't recall—as they were at the dock at the time we got there, but I saw them a little later.

Q. How about Mr. Pavao, what was he doing?

A. Mr. Pavao was assisting with the sling unloading the freight off the Mana.

Q. Now when you got there, were there many other people present at that time besides those that you have mentioned?

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

A. Just after we got there I would say about seven or eight cars arrived at the dock with a group of men, majority of them Filipinos.

Mrs. Bouslog: Mr. Crockett, may I interrupt at this time. Your Honor, I would like to ask for your order excluding witnesses apart from the one who is testifying. I believe the defendants are entitled to have the witnesses who are going to testify today excluded while other witnesses are testifying.

The Court: All the witnesses testifying today may be excused from this Court.

Mrs. Bouslog: Will the judge make his order exclusive, outside hearing of the Court room as well as out of sight.

The Court: You mean the defendants too?

Mrs. Bouslog: The defendants, Your Honor, have by the constitution a right to be present on their own trial even though they are witnesses.

(Witnesses ordered out of the Court room.)

Mr. Crockett: And these people who arrived after you got there, what did they do, Mr. DeMello?

A. They immediately began to picket from a point about 150 feet above the Mana dock.

Q. Would you explain in a little more detail "began to picket"? What did they do? What was the manner of picketing, etc?

A. They got out of the cars and then walked down about 150 feet from the Mana dock, starting

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

a picket line one back of the other and walked as far as the dock and made a circle back. After making one complete circle, they then retired to the sea wall where they sat on the wall while others leaned up against it, while others tried to get to the pavement into the wall into the shade as much as possible.

Q. About how long or how much time did it take for them to march around? How long they continue that? A. I would say about 10 to 15 minutes.

Q. And after they broke up, did the line broke up, and sat around, is that what you mean? Would you mind explaining that a little more?

A. That is correct. They fell out of rank. In other words, they did not have one line any more, but the majority of them retired to the sea wall, sat on the wall, while others standing on the pavement leaning against the sea wall, and there were few of them walking around but not in a line.

Q. What happened after that?

A. About 4:15 or 4:20 the barge came in and was being moored at the Kamalapau wharf.

Q. And what happened when the barge came in?

A. After the barge was tied to the dock, Mr. Fernandez then climbed upon the crane and four men in the meantime had climbed up on the pineapple bins, and the crowd had moved in the meantime from the sea wall out on the pavement but in the back of the KAPU line that was painted on the dock at that time, and were very orderly just stand-

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

ing and watching. When the sling was raised from the ground and the crane moved the sling on top the bins where the four men were, and as the men on top of the bins, Johnson, Marcus, Harrington and one other whose name I don't recall at the present time, were about to fasten the slings to the pineapple bins, Diego Barbosa was at that time talking in Filipino and later spoke in English "Go, go" and at the same time making motions with his hands for them to follow him.

Mrs. Bouslog: May it please the Court, I am going to interpose an objection at this time. This witness is testifying to hearsay evidence. What Diego Barbosa said is for Diego Barbosa to testify on the stand, not for Lt. DeMello to testify. I would like the Court to instruct the witness to say what he did and said and what he saw, and not what other people saw or what was reported to him.

Mr. Crockett: Did you hear Mr. Barbosa when he said this? A. Yes, sir.

Q. In the presence of the crowd you saw there?

A. Yes, he was present.

Q. And that was said in the presence of the crowd that was there? A. It was.

Mr. Crockett: Court please, we brought testimony up by identifying defendants being present at that time, and we ask that to be received at this time. If it isn't properly connected up then it would be for the Court to strike it off. It is impossible

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

for us—the large number of defendants present make it necessary for us to produce other persons who will properly identify them. As counsel well knows, statement made in the presence of defendants is admissible testimony.

Mrs. Bouslog: May it please the Court, we have no evidence of who was or was not present at the incident at this time so I fail to see how you can connect something that isn't even in evidence.

(Argument by Prosecution and Counsel for Defense.)

The Court: Overrule that objection.

Mr. Crockett: Just a minute ago, Mr. DeMello, you stated, "At the same time Mr. Barbosa made motions with his hands." Would you mind standing up before the Court so the defendants could see and illustrate the motions that were made by Barbosa at that time?

Mrs. Bouslog: Your Honor, I am going to enter the objection that Lt. DeMello's demonstration of what Barbosa did is not the best evidence. There being no showing best evidence is available, Mr. DeMello should not be permitted to demonstrate what Mr. Barbosa did.

(Argument by Prosecution and Counsel for Defense.)

The Court: Objection overruled.

Mr. DeMello: He stood on the dock over there

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

and as he was talking to the Filipinos in Filipino and then later said "Go, go" and motioning with his hands for them to go as he started across. (DeMello demonstrates motions made by Barbosa with his hands.)

Mr. Crockett: Where was he standing at that time with relation to the crowd?

A. In the front of the crowd.

Q. And when he did that, did he remain there or did he move forward?

A. He moved forward toward the pineapple bins with the crowd following him and he ran toward the tables they have over there where they drive the trucks between.

Q. And as the crowd followed him, what pace did they maintain? Walking slowly or walking fast, running slowly or running fast?

A. The front of the crowd started moving very fast, running fast toward the pineapple bins and the back end was moving rather slowly, so that back portion got up to the bins and some of them stopped right at the bins. But they were all mauling around over there while others climbed upon the pineapple bins.

Q. What happened after that when they reached the bins?

A. When they got to the bins some of them had opened up the gates of the bins and pineapples began falling out, while others climbed on the bins and

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

were after these men that were on top of the pineapple bins. They then began punching and beating up individuals that were on the pineapple bins.

Q. What else did you see happen with regard to those men on the bins?

A. They did not remain up there. They got down, I don't know how they got down. They were not up there, later saw one of them that was all wet.

Q. You recall which one that was?

A. Mr. Marcus. I know one was up there on the pineapple bin that about five or six of them were punching at him, but he was on his back. Who he was I could not say.

Q. What else happened after that case you observed?

A. After that the police in the meantime—the other officers were shouting for these men to stop and after they punched at this party on the back for a while, all came down from the pineapple bins and walked out toward the sea wall and went down toward the Mana dock and all mauled around in that area outside the white line.

Q. The time these men started to run as you testified, after Barbosa spoke to them and made the motion, did they go quietly or did they make noise? What was the nature of their moving?

A. They were all yelling as though they were—yelling would resemble something like you see in a western movie when you see a bunch of Indians going at the settlers.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. Could you illustrate or give us some of the samples of the yelling?

A. Well, I will try to the best of my ability.

Mrs. Bouslog: Mr. Crockett, to be sure, Mr. DeMello now is representing a crowd of how many people?

Mr. Crockett: I haven't asked him that question.

Mrs. Bouslog: You were asking him to yell.

Mr. Crockett: I did to give us a sample.

(Mr. DeMello gives sample of yelling.)

Q. At the time you heard the yell, by one person or by many people?

A. By a lot of people, not by one individual.

Q. When this movement occurred, referring to the time Barbosa started the action, about how large a crowd had gathered there all together at that time?

A. In my estimation, about 100 to 150.

Q. And about what proportion or what number took part in the rush?

A. It is awfully hard for me to say because they were strung all the way up from a point about 150 feet from the dock. They were along the wall, some were still at the wall while others were grouped I would say about 50 to 75 just in a group close to the bins. This group that was right close started across while the others that were further up started to move down toward the bins also.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. Could you give us some idea, about 100 to 150 there, how many were engaged in the actual rush?

A. You mean those that charged the individuals on the pineapple bins?

Q. No, I mean those that took part, any part whatever in the rush, that is, whether they charged the pineapple bins or whether they charged any other portion, in other words, moved approximately from the position. First they had a line behind the KAPU line, in other words moved across the KAPU line.

Mrs. Bouslog: May it please the Court, I object to the question as misleading and unintelligible.

Mr. Crockett: I withdraw that question.

Q. About how many people were engaged in the entire rush, that is, they moved toward the bins or toward the other portion of the wharf that you mentioned?

A. I would say about 100 to 125 of them.

Mr. Crockett: About two minutes to 12 o'clock, I suggest we adjourn for lunch at this time.

The Court: Court will adjourn to 1:30 p.m.

(Court adjourned at 12:00 noon. Court reconvened at 1:32 p.m.)

Mr. Crockett: You want to stipulate defendants all present?

Mrs. Bouslog: Yes.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

The Court: Mr. DeMello is on the witness stand, continue with his examination.

Mr. Crockett: Were you able to recognize any of the persons who were present in this crowd which you described. A. I was.

Q. Who were you able to recognize?

A. Two men. Diego Barbosa and another party with a leather jacket, Pablo Pineda.

Q. Diego Barbosa you know whether or not he has been charged in this offense?

A. He has been.

Q. And Pablo Pineda, is he one of the defendants in this case?

A. Pablo Pineda was one of the ones picked up in the last group.

Q. Is he present in Court now?

A. Yes, he is standing outside on the porch.

Mr. Crockett: Court please, I ask that Pablo Pineda be asked to stand up.

Mrs. Bouslog: Defendants are not required to testify against themselves and that privilege to testify in favor of themselves clearly extends too.

(Argument by Prosecution and Counsel for Defense.)

Mr. Crockett: I withdraw the question. I will ask Mr. DeMello to place his hand on Pineda. Mr. DeMello, will you go and place your hands on the man you believe is Pineda?

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

(Mr. DeMello walks over to and places his hand on Pineda)

Mrs. Bouslog: Is this the man you think is Pineda?

Mr. DeMello: I don't think, I know.

Mr. Crockett: Mr. DeMello, during the time that you were down at the scene of this incident, will you state whether or not you made any pictures?

A. I did. I took movies of them with a 16 mm. camera.

Q. Were the films developed?

A. They were.

Q. And have you examined the films to see whether or not it clearly portrays what you saw happened there?

A. I have.

Q. Have you the films with you at the present time?

A. I do.

Q. May I have it? Court please, at this time we ask that the film which witness has just handed to the Prosecution be marked for identification as Prosecution's Exhibit "A."

Mrs. Bouslog: Your Honor, this is just marked for identification? I don't think they have been properly identified as yet as having been taken at the place and time.

Mr. Crockett: That is, after these pictures were taken by you, have they been examined to ascertain whether or not they themselves clearly represent what you saw at the time they were taken?

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

A. I examined them and they were exactly what I saw.

Q. Now can you state, Mr. DeMello, whether or not the film which you just gave the Prosecution to be marked for identification as Exhibit "A," is that what is commonly known as moving pictures?

A. It is.

Q. The individual scenes show on there, approximately what size are these? A. 16 mm.

Q. And will you state whether or not any enlargements have been taken from that film?

A. Some enlargements were made in Honolulu from that film.

Q. Showing you a group of pictures, which is numbered on the back, Court please, from 1 to 55, I ask you to examine those pictures and state whether or not those are enlargements made from the films which you have previously identified as being the ones from that particular location and time.

A. These are all taken by me, the pictures were taken by me, the enlargements made from the many films that I took.

Q. And these pictures you examined before?

A. Yes.

Q. And will you state whether or not these pictures as stills or enlargements or portion of your movie film clearly portray as still pictures what happened there and took place at the time and place concerned which you previously testified?

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

A. They do.

Mr. Crockett: Court please, at this time we offer the film in evidence.

Mrs. Bouslog: May the Court please, I believe the film has not been properly identified to the time which it has been taken. If Mr. DeMello took it in the morning, in the afternoon, after the so-called rush, it isn't properly receivable in evidence. The time which this film was taken has not been fully stated. The date as well as time must be confined to the period which alleged incident is supposed to have happened.

Mr. Crockett: I submit to the Court, Court please, the time and place have been fully identified. Will you please explain to us in detail the time and place you took those moving picture, the film which you identified? What time was it, the portion up until the entire scene was taken?

A. The portion prior to the incident at the Kamalapau wharf was taken on the 14th of July in the year 1947 at about 10 o'clock in the morning. There was one scene of one individual, Casemilo Millare, he was sitting in the car that was taken on one of the pineapple field road as he was sitting in his car. The scene of the incident was taken at 4:30 p.m. on the 14th day of July, 1947, and all the film thereafter that incident was taken at the Kamalapau wharf on the 14th day of July, 1947. Right after I got through taking the scene of the

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

incident I put in a new magazine and took all the individuals at the dock that was over there. After I got through the second magazine I put the third one in and continued to take the rest of the individuals that was over there, kept on shooting different individuals to get a clear identification.

Mrs. Bouslog: May it please the Court, I am going to object to the Court on receiving the film except the time the film was taken of the incident itself. The pictures that were taken in the morning, the pictures that were taken after the incident have no bearing upon the actual occurrence itself and therefore can not be received in evidence. We object to the introduction of the films being received in evidence but particularly to that portion which the witness testified as actually taken not at the time of the incident. Of course, we have not seen the film, we reserve our right to object that be stricken from the record after we have seen the film.

The Court: Prosecution have no objection.

Mr. Crockett: We have no objection. I ask for about five minutes recess to make Mr. DeMello check it over and remove that which counsel have objected.

(Court recessed at 1:52 p.m. Court reconvened at 2:05 p.m.)

The Court: Proceed.

Mr. Crockett: Mr. DeMello, during the recess have you edited your film so that now it includes

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

only the happenings which you testified at that incident on the 14th? A. Yes, it is.

Q. Beginning with what?

A. Beginning with the barge coming in at about 4:15 or 4:20 p.m. on the 14th of July, 1947.

Mr. Crockett: At this time, Court please, we renew our offer to have the film be received in evidence and marked Prosecution's Exhibit "A."

Mrs. Bouslog: Your Honor, the record to show that Counsel for the defendants objects to the introduction of the film on the grounds that we have only the word of the witness that it was taken at the time the alleged incident occurred. I will renew objection after the film is shown if any picture can not be identified at that time.

Mr. Crockett: We have no objection to having it further trimmed only to the incident.

The Court: The Court accepts this film as Prosecution's evidence and mark it Exhibit "A."

Mr. Crockett: At this time Prosecution offers in evidence the pictures numbered 1 to 55 which Mr. DeMello has testified are enlargements of individual scenes from this particular film. We ask that they be received as well as Exhibit "B" and have a police officer paste them on large papers so that they would be easier to handle.

Mrs. Bouslog: May I examine the pictures, Mr. Crockett?

Mr. Crockett: Yes.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

(Court recessed at 2:10 p.m. Reconvened at 2:25 p.m.)

Mr. Crockett: Court please, from the original group that we presented were included some pictures which I thought taken at the time of the incident but taken from the film Court has excluded. They are number 6, 8, 10, 28, 30, 37, 40, 41, 42, 43 and 51. That to be excluded from 1 to 55.

Mrs. Bouslog: May it please the Court, having examined the pictures, it is obvious from the pictures themselves that one can not tell the time or place at which the pictures were taken. Lt. DeMello has testified he took pictures during the course of the strike, he took pictures in the morning, although in the morning of the same day incident occurred, around 4:30 in the afternoon, there is no internal evidence on the pictures indicating the time they were taken. They are so blurred and so unable to discern what the picture is about in many instances. That would be almost impossible for a person to recognize when or where the pictures were taken. For that reason I object to the receiving of the pictures as evidence.

(Argument by Prosecution and Counsel for Defense.)

Mr. Crockett: I withdraw the offer and ask Lt. DeMello. You heard me state to the Court I withdraw certain pictures? A. Yes, I did.

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Q. Did you examine the portion of the film that you took off from the original film which you said was taken in the morning so as to exclude from these pictures 1 to 55 and exclude from them those pictures which were enlargements or portion of the film taken outside the incident?

A. I have examined them and I have taken them out from the original 55 that were in the group.

Q. So that then the remaining pictures represent enlargements from portion of the film which was taken during the incident and immediately thereafter?

A. Yes.

Mr. Crockett: At this time, Court please, we again offer the films or the pictures as evidence and marked in a group as Prosecution's Exhibit "B."

The Court: Pictures accepted as Prosecution's evidence and marked Exhibit "B."

Mrs. Bouslog: I already objected to that for the reasons stated.

Mr. Crockett: Have you any objection to having a police officer or the clerk paste this as I suggested?

Mrs. Bouslog: Mr. Crockett, I would like to have the defendants be offered an opportunity to examine the pictures. They can pass them around then they can be mounted after that time.

(Court recessed at 2:37 p.m. Court reconvened at 3:00 p.m.)

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

Mr. Crockett: Would you mind proceeding with the cross-examination?

Mrs. Bouslog: I would rather see the films before I proceed with the cross examination of Mr. DeMello.

Mr. Crockett: The machine will have to be run by Mr. Billson. You have any objection to Mr. Billson running the film?

Mrs. Bouslog: No.

(Court recesses to view film run on screen in the Court room.)

The Court: Cross-examination?

Mr. Crockett: I don't think we have much time to proceed any further.

Mrs. Bouslog: I would like to state for the defendants I would like to continue until we conclude the hearing, that the law of the Territory does not contemplate defendants shall be held indefinitely for a felony charge upon a complaint of a police officer which is the case in this instance, and ask that the Court set the case down for the earliest possible time for which counsel and defendants can be present. I believe at the conference during recess it developed that the 28th of August is the first possible date for the continuance of the hearing, I would ask that the hearing be continued at that time, at the same time reserving my objection to not continuing at this time and continuing tomorrow

Exhibit K—(Continued)

(Testimony of Francis B. DeMello.)

again. Stating for the record I believe these defendants are being illegally held. Prosecution did not at the last time proceed to show evidence of probable cause.

Mr. Crockett: Counsel proposes to have case set on the 28th of August. Court please, Mr. DeMello will be detained in town until the 29th. I think we have other witnesses, we can go ahead and then he will come back before we conclude the hearing.

The Court: Case is continued until the 28th of August. No objection by Counsel?

Mrs. Bouslog: I have no objections except as I have stated. (Correction made with approval of Court 4/27/48.)

The Court: At this time Court is adjourned until August 28th.

(Court adjourned at 3:15 p.m.)

Continued to August 28, 1947.

/s/ MUNAKI MARIMOTO,
Clerk-Stenographer.

Thursday, August 28, 1947

Preliminary hearing continued from August 22nd, 1947. Court convened at 10:10 a.m. with Acting District Magistrate Young Wa presiding.

Mr. Wendell F. Crockett, counsel for Prosecution.

Exhibit K—(Continued)

Mrs. Harriet Bouslog, counsel for Defendants.

Mr. Crockett: We are ready to proceed, if the Court please.

Mrs. Bouslog: We are ready to proceed.

The Court: The interpreter is not here yet. We will proceed.

Mrs. Bouslog: I am able to stipulate again that the defendants are all here.

Mr. Crockett: We so stipulate, if the Court please. As I said the other day, Mr. DeMello had to go to Honolulu and I believe will be back tomorrow or Saturday. Before we conclude, we will have him back for cross-examination.

Mrs. Bouslog: Do you mean Mr. DeMello is not here today? How can we proceed without this witness?

The Court: I thought you understood that.

Mrs. Bouslog: Was an effort made to subpoena him?

Mr. Crockett: It was mentioned the other day.

Mrs. Bouslog: I did not so understand that he was not to be here for cross-examination today. I would like to have the Prosecution show cause as to why Mr. DeMello was not subpoenaed and required to be present today for purposes of cross-examination.

Mr. Crockett: I so stated before and thought that you understood it at that time that he will be here tomorrow or Saturday.

The Court: That was the understanding—that

Exhibit K—(Continued)

he was on vacation and would be back later.

Mrs. Bouslog: I did not so understand it, but it will be in the transcript and will speak for itself when we get it.

Mrs. Bouslog (To Court Stenographer): Are you an official court reporter?

Court Stenographer: No, I am just assisting in the absence of a court stenographer.

Mrs. Bouslog: Then I would like to ask that the court stenographer be sworn. (Court does so.)

Mr. Crockett: Call Mr. Bilson.

The Court: The interpreter is here now. Mrs. Lorita Viduya has previously been sworn, so it will not be necessary to do so again.

Mr. Crockett: We are ready to proceed. Call Mr. Bilson.

Mrs. Bouslog: Again Your Honor, I would like to ask the Court for an order to exclude from the Courtroom all witnesses who are to testify.

The Court: All witnesses who are to testify will please leave the Courtroom.

VAUGHN BILSON

Mr. Vaughn Bilson, being first duly sworn, testified as follows:

Direct Examination

Mr. Crockett: What is your name?

A. Vaughn Bilson.

Q. Now, Mr. Bilson, when I ask you a ques-

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

tion will you please pause a little to give the interpreter a chance to interpret to defendants.

A. Yes, sir.

Q. Where do you live? A. Lanai City.

Q. What is your work? Will you speak a little louder, please, so that everyone can hear.

A. Engineer and draughtsman.

Q. On July 14th were you down at Kaumalapau in the afternoon? A. I was.

Q. I was referring to July 14th of this year, 1947. A. Yes.

Q. About what time did you go down?

A. About three o'clock.

Q. When you arrived did you note whether there were many persons present there or did they arrive after you did?

Mrs. Bouslog: May it please the Court, I am going to object to the form of the question, the assumption there were people there in the same question.

Mr. Crockett: The evidence already shows from DeMello's testimony there was a large crowd there.

Mrs. Bouslog: You asked him if they were already there.

Mr. Crockett: That shows in the evidence.

Mrs. Bouslog: But not by this witness.

Mr. Crockett: We will withdraw the question. When you [3*] arrived at the wharf did you notice whether or not there were many people congregated there? A. Yes, I did.

* Page numbering appearing at bottom of page of original certified Transcript of Record.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. What happened after you arrived there,— what took place?

A. Shortly after I arrived more people came down, several car loads.

Q. And these people that came down, what did they do when they arrived there?

A. They left their cars and lined up along the sea wall.

Q. Did you see Mr. Fernandez there at any time? A. Yes, I did.

Q. And Mr. Harrington? A. Yes.

Q. And Mr. Pavao? A. Yes.

Q. When you arrived, what was Mr. Fernandez doing?

A. Preparing to assist in mooring the barge to the dock.

Q. And Mr. Pavao, did you notice what he was doing?

A. He was also directing the mooring of the barge.

Q. Now, then, these people who you say arrived in cars and parked themselves along the sea wall, what else did they do, if anything?

A. They remained rather quiet and congregated at the lower end of the sea wall along the wharf.

Q. How long did they remain like that?

A. Until after the barge had been landed and the crew was preparing to load freight on it.

Q. After the barge was ready for loading what if anything, happened then? [4]

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

A. Mr. Fernandez went to the crane and started to drop the spreader-bar to the bins.

Q. And what, if anything, did this crowd do then?

A. At that particular instant, nothing.

Q. What happened after Mr. Fernandez started to lift the spreader-bar?

A. The spreader-bar was lowered to the bin and Mr. Johnson, Mr. Harrington and Mr. Marquez prepared to connect it to the bin and the crowd broke into a riot and ran over to the bins, climbed up and started rioting.

Mrs. Bouslog: I object to "the crowd broke into a riot" as a conclusion of the witness.

Mr. Crockett: I think that is plain enough English and not a conclusion.

The Court: Objection over-ruled.

Mr. Crockett: How long did this disorder continue, Mr. Bilson?

A. Only a very few minutes.

Q. Where were you when this happened?

A. I was standing on the extreme makai end of the loading platform.

Q. And at that time, what were you doing?

A. I was taking pictures with a movie camera.

Q. You have the film you took at that time with you?

A. I do.

Q. Have you examined that film to see whether or not it gives a true and accurate picture of what you saw?

A. I have, and it does.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. Does this film contain anything else besides what happened while you were there from the time you arrived until the time the trouble started?

A. There are some scenes on the beginning of the film [5] which were taken prior to my arrival at the Harbor.

Q. Have you the film with you at the present time? A. Yes.

Q. Will you produce the film?

(Witness shows film to Court.)

Q. Can you tell us approximately how much of this was taken before your arrival at the Harbor that afternoon?

A. Approximately the first fifty feet.

Q. And from then on the scenes which were taken were at the Harbor from the time you arrived there until the trouble stopped? A. Yes.

Q. Could you unroll the first fifty feet (witness unrolls film). Court please, I want to offer in evidence the remaining portion of this film which the witness testified as being taken at that time and represents as accurately as possible what happened there from his own observation and would like to ask the Court that the film not be cut as the witness would like to keep it intact. Perhaps we could mark the film.

Mrs. Bouslog: I do not know what is contained in the first fifty feet and it would be improper to

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

receive it as part of the official record since it is irrelevant. I object without a further showing. Mr. Bilson testified he arrived about 3 o'clock, that for a long period of time after he arrived everything was quiet and orderly. There would have to be a separation of the film taken during the alleged incident from the other film which is not shown to have any relevance to the incident which is alleged to have occurred there. I do not think that it is proper to have this offered in evidence. [6]

The Court: That is,—the first fifty feet?

Mrs. Bouslog: No, Mr. Bilson has testified he arrived at the Harbor at 3:00 p.m. and has testified merely that this remaining film was taken from the time he arrived until after the incident occurred. Only the film taken during the incident is relevant.

Mr. Crockett: If the Court please, I think the question of the film which leads up to the incident is just as material. It is certainly not prejudicial to the defendants as he has testified that whatever happened at that time was peaceful and quiet. However, we wish a portion to be received in evidence as it connects up with the case and identifies persons present. We have a right to rely on any evidence leading up to this incident. I think it is material. We ask that all the film pertaining to the case be taken.

Mrs. Bouslog: I think it for counsel for defend-

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

ants to determine what is prejudicial to the defendants. This witness has testified an incident occurred at a particular time. He has described the incident and the defendants have a right that there not be introduced evidence against them which is not material. There was no showing by the prosecution that some of the defendants did not leave or that this film was taken at the time when the alleged incident occurred. There was no testimony as to the time when he left,—perhaps it was from 3:00 p.m. until the sun went down.

The Court: Only a portion will be introduced, the first fifty feet will be taken out.

Mrs. Bouslog: There is no question about the first fifty feet. Even the prosecution does not contend that is admissible in evidence. I am talking about what remains the part which Mr. Bilson testified,—he testified that he started taking pictures at 3:00 p.m. (Further argument.) [7]

Mr. Crockett: The Court should pass on the evidence.

Mrs. Bouslog: May I see the film, Mr. Crockett?

Mr. Crockett: Do you want a showing with the Court present?

Mrs. Bouslog: I think I should be permitted to see the film and the defendants should see it.

Mr. Crockett: Do you want it shown in the Court here?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Mrs. Bouslog: It is just a matter of examination by counsel.

The Court: We will take a short recess.

(Court recessed at 10:45 a.m. Reconvened at 10:55 a.m.)

Mrs. Bouslog: I do not want to see the first fifty feet.

Mr. Crockett: We can run it through the projector without a light if the defendants do not want to see it. I do not want to do anything to injure the constitutional rights of the defendants.

(Mr. Bilson sets up projector and endeavors to run film. There is some delay.)

Mrs. Bouslog: Let's not slow down the process. As long as it is clear from the record we do not mind your showing the first fifty feet.

Mr. Crockett (to Witness): You may show the first fifty feet.

Mrs. Bouslog: Will you ask Mr. Bilson to state at what point you are beginning to offer this film in evidence?

Mr. Crockett: Mr. Bilson, will you give us a warning when you come to that portion of the film which we want to offer in evidence. (Mr. Bilson runs film in Courtroom.)

Mr. Bilson: It starts here, where the boat is shown coming into the Harbor and then men are running and jumping up on the bins.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Mr. Crockett: At this time, if the Court please, we want to offer the film in evidence beginning immediately after the scene showing the arrival of the tug boat and beginning at the time when the crowd is shown rushing [8] over to the bins and climbing upon the bins.

The Court: That portion is admitted as Prosecution's evidence, Exhibit "C."

Mr. Crockett: Now showing you pictures I am going to offer collectively, (hands them to defense counsel for examination).

Mrs. Bouslog: May it please the Court, I believe three of these pictures are taken from the part which was not introduced in evidence. I think these were taken from the film before the part offered in evidence.

(Hands pictures Nos. 74, 68, 69, 70 and 80 to Mr. Crockett.)

Mr. Crockett: If the Court please, I have a group of pictures here and instead of marking them individually for identification I am going to ask Mr. Bilson to identify these first, then will offer them as a group. Mr. Bilson, I have some pictures marked here from 68-80. Would you examine these pictures first of all and tell us if they are enlargements of those pictures admitted in evidence?

The Court: That's exclusive of the first fifty feet?

Mr. Crockett: I will exclude those, it is a mat-

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

ter of evidence. Are they made from the movies you took? A. They were.

Q. Now, would you go through these and pick out those made before the first fifty feet of the movies offered in evidence?

(Mr. Bilson looks over the pictures, picks out four pictures.) [9]

Mr. Crockett: These are Nos. 68, 69, 70, 74, those were taken from the first fifty feet and the others, Nos. 71, 72, 73, and 75 to 80, inclusive, were from the portion admitted in evidence?

A. Yes.

Mr. Crockett: We offer this group of pictures in evidence (9 pictures).

The Court: Admitted in evidence and marked Exhibit "D."

Mrs. Bouslog: I would like a brief recess so that the defendants may examine the pictures to see if their facts tally with mine.

Mr. Crockett: No objection.

The Court: We will take a brief recess.

(Court recessed at 11:20 a.m. Reconvened at 11:30 a.m.)

(Mrs. Bouslog hands pictures to Prosecutor Crockett.)

Mr. Crockett: Showing you these pictures marked numbers 68, 69, 70, 74, would you explain when these pictures were taken?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

A. They were taken shortly after my arrival at the Harbor at three o'clock.

Q. You mentioned in one portion of your testimony that you saw a large number of persons arrive by truck. Do these pictures have any relation to those persons in the trucks?

A. They do. They are pictures of some of the people who arrived by truck.

Q. And about how long before the incident you mentioned regarding the people rushing over to the bins,—about how long before were they taken?

A. About 45 minutes to an hour before. [10]

Q. Do these pictures—referring to these four—do they accurately represent what you saw at the time you took them? A. They do.

Q. If the Court please, we ask that these four pictures be marked for identification.

Mrs. Bouslog: This is nothing but bad faith on the part of the Prosecution. I object. The prosecution stated they would not offer these for identification. I think the Court should reject the offer.

Mr. Crockett: I think counsel misunderstood. I stated the portion of fifty feet prior to the incident. I stated nothing about pictures. I stipulated that the moving pictures would not be received in evidence, that is, the first fifty feet.

Mrs. Bouslog: But Mr. Bilson stated these are from the movies taken.

Mr. Crockett: It can be connected up.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Mrs. Bouslog: I reiterate the charge of bad faith.

The Court: Admitted for identification and marked Exhibit "E" for prosecution.

Mr. Crockett: Mr. Bilson, at the time this incident was occurring did you identify any of the persons who were engaged in that incident?

A. Yes.

Q. Would you give us the names of some of those who were identified by you at that time?

Mrs. Bouslog: I object. I think identification is a conclusion of the witness and the question should be answered in a different way, it should be of his own knowledge. [11]

Mr. Crockett: Did you recognize of your own knowledge any persons present there?

A. Yes.

Q. Will you give us the names of the persons you recognized?

A. A man known to me by the name of "Molokai."

Q. Is he present in Court? Could you point him out to us?

A. Yes, sitting next to Mr. Fraser on the front seat.

Q. Do you know what his correct name is?

A. No.

Q. What other person did you recognize at the time?

A. A man known to me as Pablo.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. Could you point him out?

A. Yes, he is standing in the doorway (describes him).

Q. Did you recognize any other persons?

A. A man whose name is Quinton.

Q. Would you mind pointing him out?

A. (Looks Around): He is on the porch, sir.

Q. Will counsel object to his coming in to be identified?

Mrs. Bouslog: The individual pointed out by Mr. Bilson will come in.

Mr. Crockett: Is this the man coming in the door, with the blue-striped shirt on? A. Yes.

Q. Who else did you see?

A. A man known to me as "Gigo."

Mrs. Bouslog: As what?

A. "Gigo" is the name I know him by.

Mr. Crockett: I do not think he is one of the defendants.

Mr. Bilson: I do not see him here.

Mrs. Bouslog: He was present at the time but he is not a defendant, to your knowledge? [12]

A. Not to my knowledge.

Mr. Crockett: Not in these present proceedings.

Mr. Bilson: Not so far as I know.

Q. Any other person? A. No.

Q. Do you wish to cross-examine?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Cross-Examination

By Mrs. Bouslog:

Q. Mr. Bilson, at what time did you go down to the Harbor that day?

A. Approximately 3:00 p.m.

Q. At what time did the alleged incident occur?

A. Some time after four, I think about 4:30.

Q. At whose direction did you go down to the Harbor? A. Hawaiian Pineapple Co., Ltd.

Q. Specifically, who? A. Mr. D. Fraser.

Q. Were you instructed to take your camera?

A. I was.

Q. Were you down at the Harbor in the morning? A. I was.

Q. Did you take pictures at any time?

A. I did.

Q. You are employed by Hawaiian Pineapple Company and this was considered a work assignment? A. Yes.

Q. What were your instructions from Hawaiian Pineapple Company?

Mr. Crockett: To which we object, if Court please. We are not trying any issue of the Hawaiian Pineapple Company but only of the incident, such instructions would be irrelevant and immaterial in this case.

Mrs. Bouslog: The defendants have a right to show these [13] are criminal proceedings not

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

brought in good faith but brought by private interests and that is why I asked the witness this question. He is an employee of the Company and there was a strike. (Argument.)

Mr. Crockett: The question of good faith does not enter into this picture. The question is whether they should be bound over to a jury and for a trial jury to take into consideration, a question of whether the incident did happen and good faith has nothing to do with it.

Mrs. Bouslog: On the contrary, the proceedings here is for the purpose of determining whether or not there is probable cause upon which your Honor believes that a jury would find these people guilty if indicted. The tests are the same as will take place in the trial.

The Court: Objection sustained.

Q. Were you at the Harbor in the morning?

A. I was.

Q. Did you take any pictures in the morning?

A. I did.

Q. At what time did you start taking pictures?

A. Some time between ten and eleven, I believe.

Q. At what time did you start taking pictures, the pictures that were shown, that is, the whole roll?

A. Shortly after my arrival at three o'clock.

Q. At what time did you start taking the films which were offered in evidence?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

A. At whatever time the riot started, which was around 4:30, I don't know exactly.

Q. Where were you standing while you were taking the pictures, the pictures offered in evidence?

A. On the extreme makai end of the loading platform.

Q. We do not have a blackboard here, do we? I am not sure of the location of the Harbor. Were you standing inside the so-called "kapu" line down at the Harbor? (Prosecution hands counsel a map of the Harbor.) Will you point out on the map where you were standing? (Witness points out approximate spot on map.) For the record we will stipulate that is Kaumalapau Harbor. Now, were all the pictures introduced in evidence taken from that point? A. No.

Q. Will you describe what you did from the time the pictures shown in evidence were taken, that is the point where you stood while you took these pictures? You may indicate on the map.

A. I climbed on top of the next bin to here, I was standing here (points to map, approximate location).

Q. Were you taking pictures all during the time the alleged incident occurred.

A. No, it took some time in between to wind the spring in the camera, that took a little time.

Q. Mr. Bilson, you have stated to the Court that you recognized a person known to you as "Molo-kai," is that correct? A. It is.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. At what time approximately in relation to the happening of the incident did you first see this individual? That is, when you came down there that afternoon?

A. I saw him arrive shortly after I did.

Q. How long have you known this individual? This person known to you as "Molokai"?

A. For the past several months.

Q. How did you become acquainted with him?

A. He works in the Engineering Department, as I do.

Q. Did you observe this individual at all times during the course of the happening?

A. Not at all times.

Q. Will you state whether you can positively identify or testify that the person known to you as "Molokai" was present at all times when the alleged incident is supposed to have occurred?

A. He was there when it started and was there when it finished.

Q. You mean he was present. He was at the Harbor, is that what your answer indicates?

A. Yes.

Q. You mean he was at the Harbor at the time of the alleged incident? A. He was there.

Q. Will you tell what you observed, what you yourself saw him doing during the time the alleged incident happened?

A. I saw him run in with the rest of the crowd,

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

milling around with them and help to open and spill out the pineapples in the bins.

Q. How many people were in the group that ran in and milled around?

A. I did not count them, but I would judge about one hundred and fifty.

Q. I believe your own pictures do not show that many.

A. My pictures cannot take in as many as my eyes can due to the limitations of the camera.

Q. In other words, the pictures do not represent actually what you saw?

A. They represent portions of what I saw.

Q. Now, you stated you saw "Molokai" run in, mill around with the others. Can you positively swear he was in the group at all times? [16]

A. I cannot say at all times.

Q. Mr. Bilson, at the time when this alleged incident occurred, how many police officers were present?

A. There were six, I believe.

Q. Will you name them, please?

A. Asst. Chief Freitas, Lt. Medeiros, Officer Takahama, Officer Bironde, a Captain of detectives, I believe from Maui, whose name escapes me at the moment.

Q. And how many employees of the Company were present?

A. About six or seven.

Q. Will you name those you can recall?

A. Mr. Harrington, Johnson, Marquez, Pavao, Fernandez, myself.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. That's all you can positively recall and identify as having been present? A. Yes.

Q. Will you state if any police officer present at the time you were present read the law to the defendants or ordered them to disperse?

A. I did not see or hear it.

Q. When you were present, if a police officer had, you would have seen or heard it?

A. Not necessarily.

Q. Well, you stated that this is a map of the Harbor and you were standing here during the time you took the pictures.

A. I did not say that.

Q. Will you describe where else you went?

A. I was chased off and went down to the barge.

Q. The alleged incident all occurred in this area? Right here? (points to map.) [17] Now how long have you known Pablo Pineda, or the man known to you as Pablo Pineda?

A. I have seen him around town for several months.

Q. You know him only by name? Just by seeing him around? He does not work with you?

A. No.

Q. You do not think it is possible you could confuse him with some one else?

A. Not now.

Q. We are talking about July 14th—do you think you would have been able to pick him out of a crowd of people? A. Yes.

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

Q. Will you state when you first saw this individual known to you as "Pablo" on that afternoon? The time?

A. The time by the clock I would not know.

Q. Will you state how long you have known the person known to you as "Quinton"?

A. About six months.

Q. How did you become acquainted with him?

A. He works in the Carpenter gang.

Q. And did you observe this individual known to you as "Pablo" at all times during the alleged incident?

A. It would have been very difficult to observe any one individual for the entire period down there.

Q. As a matter of fact, Mr. Bilson, it would be almost impossible to identify an individual among a crowd of people down there and recall just what each individual was doing during the course of time.

A. It would be difficult to say what he was doing during the entire time, but I can recall seeing each of these individuals at certain times and places, doing certain things. [18]

Q. And the defendants you have mentioned are the only individuals you could identify by sight and nickname at the Harbor that day?

A. Yes.

Q. That's absolutely all you could identify of your own knowledge.

A. There is one more.

Q. In other words you could identify by sight

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

and knowledge, your own personal knowledge, five persons present outside of the supervisors and police officers?

A. The number I mentioned before.

Q. Will you state then the number of individuals you could recognize of your own personal knowledge?

A. The number I gave you before, plus one more which I recall since I have been here in Court.

Q. I asked for the number, Mr. Bilson.

A. Five would be correct.

Q. How long have you lived here on the island of Lanai?

A. Approximately one year and six months.

Q. During all that time you have been employed by Hawaiian Pineapple Company? A. Yes.

Mr. Crockett: You say you recall another person, could you give us his name? A. Makekau.

Q. He is present here?

A. I think he is. I saw him standing in the doorway a moment ago. (Points him out.)

Q. Sitting on the porch with a bright yellow shirt on—standing now in the doorway?

A. Yes. [19]

Mrs. Bouslog: At what time did you first recognize Mr. Makekau?

A. I have just now recalled the name.

Q. At what time did you notice the person you have now recalled?

Exhibit K—(Continued)

(Testimony of Vaughn Bilson.)

A. Sometime before the riot started, shortly before.

Q. That would be, in your estimation, around four?
A. Approximately.

Q. Now this person whose name you have recalled, did you have him under observation at any time during the course of the so-called alleged incident?

A. As an individual among the crowd.

Q. In other words, you cannot testify as to anything he did as an individual apart from the crowd?

A. No.

Q. That's all.

The Court: Court will recess until 1:30 p.m.

Mrs. Bouslog: May we have a shorter adjournment?

Mr. Crockett: I think 1:30 p.m. is a reasonable time.

The Court: Court will recess until 1:30 p.m.

(Court recessed at 12:00 noon. Reconvened at 1:35 p.m.)

Mrs. Bouslog: We are ready to proceed, Your Honor.

The Court: The Prosecutor will be here in a few minutes.

Mr. Crockett: We are ready to proceed, Court please. Call Mr. Heminger.

Exhibit K—(Continued)

MURRAY V. HEMINGER,

being first duly sworn, testified as follows:

Direct Examination

Mr. Crockett: What is your name?

A. Murray V. Heminger.

Q. What is your occupation?

A. School principal. [20]

Q. On July 14th of this year 1947 were you down at Kaunalapau wharf here on Lanai, on that afternoon between 3 and 5 p.m.? A. I was.

Q. About what time did you say you went down there?

A. My wife and family and I left here shortly after three o'clock.

Q. The testimony so far shows that sometime after three o'clock a barge came in and Mr. Fernandez and others prepared to tie up the barge,—were you present about that time? A. I was.

Q. And there is also testimony tending to show at or about that time a large number of persons present rushed over to the bin where some of the men were working. Were you present when that happened? A. I was.

Q. About where were you when that trouble happened?

A. I was on the stone wall next to the Mana dock and sitting right near John Maile at the time, about sixty feet from where the bins were stacked up on the wharf.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Q. And while you were down there did you at any time take pictures of what happened?

A. I did. I took some moving pictures at that time.

Q. When did you start taking the moving pictures, that is, at what period of that action was it that you began to take pictures?

A. I would say just shortly after a riot broke out and over a hundred odd men rushed the pineapple bins there.

Q. How long did you continue to take pictures of what was happening there? [21]

A. I took pictures until the film ran out of the camera, I estimate about 15—20 feet.

Q. And the film which you took at that time, has it been developed?

A. The film has been developed and I have it right here.

Q. Have you had occasion to examine the pictures after they were developed? A. I have.

Q. Will you state whether or not the pictures which were taken which are shown on the film accurately portray what took place at that time?

A. I would say that the films are accurate. I remember distinctly the setting of the camera at 32 frames per minute and the distance of about 60-80 feet that I was away from the bins and the shutter speed at—

Mrs. Bouslog: I will waive this technical business of the camera.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Mr. Crockett: O.K.

Q. Do you have the film with you?

A. Yes.

Q. Court please I want to exhibit this film before offering it in evidence. Does this contain any other scene except what you are testifying to?

A. No other scene.

(Mr. Crockett hands film to Mrs. Bouslog for examination.)

Mr. Crockett: Mr. Bilson, will you run this film?

Mr. Heminger: I can run it, to save time. (Film shown.)

Mr. Crockett: If the Court please, we offer in evidence this portion of film which was shown and ask it be marked Exhibit "F". [22]

The Court: Received in evidence and marked Exhibit "F".

Mrs. Bouslog: I would like before you make your ruling to object to the introduction of the film which was taken after the time of the alleged incident as it has no relevance to the charge.

Mr. Crockett: You mean the part where the pineapples are shown to be spilled around outside?

Mrs. Bouslog: It's a matter of time.

Mr. Crockett: I think it was taken at the time.

Mr. Heminger: After the men withdrew from the scene?

Mrs. Bouslog: This is highly irregular. If Mr. Crockett wants to question the witness, okeh, but

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

the witness should not ask questions. I believe the witness stated these were taken after the incident occurred?

Mr. Crockett: I don't know if it makes much difference, just a few pineapples on the ground. It is part of the *res gestae*, if the Court please. What part do you want taken out,—the part which came after the specific incident where the bins opened and pineapples are shown strewn on the ground?

Mrs. Bouslog: I believe no pineapples were charged, Mr. Crockett.

(Argument.)

Mr. Crockett: I submit to a ruling, if Court please.

The Court: Court will admit this as evidence.

Mr. Crockett: Mr. Heminger, showing you eleven pictures (will you examine these, Mrs. Bouslog)—hands them over for examination and they are examined and returned—which are marked 57 to 67 inclusive, I will ask you to examine these pictures and state whether these reproductions are taken from the film just exhibited by you?

A. I would say these are, although they are not arranged in order of the film shown. (Examines pictures.) [23]

Q. But they are reproductions?

A. I would say they were.

Q. Do they truly and accurately portray the scene as you saw it at the time?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. Yes, they do.

Q. If the Court please, we offer in evidence pictures numbered from 57 to 67 inclusive and want to mark it as prosecution's Exhibit "G".

The Court: Admitted in evidence and marked Prosecution's Exhibit "G".

Q. Cross-examine.

Cross-Examination

By Mrs. Bouslog:

Q. Why did you go down to the pier on that day?

A. Merely to take my family, my daughter, my son and a lady visiting us to the Harbor to swim.

Q. Were you asked to go down there by the representatives of the Hawaiian Pineapple Company?

A. I was not.

Q. Were you standing by the wall at all times when you were taking the pictures, by the stone wall?

A. Not at all times, but most of the time right in the vicinity.

Q. In other words, you never crossed the so-called "kapu" line?

A. No, I never crossed the line. If you are talking about the time of the incident, no,—after the incident, I did.

Q. How long have you known Mr. Maile?

A. About four years. I have been fishing with him.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Q. You say he was standing beside you at the time when the alleged incident happened?

A. No, at the time he was not standing there, at the time before, he was sitting and standing both.

Q. During the time the alleged incident happened, was part of the crowd standing completely outside the kapu line?

A. I believe that they were, I am not sure. I think most of them were outside the kapu line, although I am not sure.

Q. And how many would you estimate were inside?

A. I could not tell you—is this before the incident?

Q. I am talking about during the incident. The question was 'at the time the alleged incident happened. Will the Court instruct the witness to try to understand the questions?

(Argument.)

Mr. Crockett: Counsel's question is hard to understand.

Mrs. Bouslog: Just answer the question as asked.

The Court: Do you understand that?

A. All right.

Q. What time did you say you went down there. What time did you get down there?

A. I got there twenty to twenty-five minutes after three. I do not recall the exact time.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Q. At the time you got down there, how many people do you estimate were in the crowd?

A. At the time I arrived there, there were probably a couple dozen there.

Q. Around 24 people? How many supervisors of the Hawaiian Pineapple Company were there that you recognized when you got down there?

A. The only ones I recognized—I have a list——

Mrs. Bouslog: Will the Court instruct the witness to answer the questions put to him without reference to any list?

The Court: Please answer the questions.

Q. How many Company supervisors did you recognize?

A. I would rather name them than to make a guess at them. [25]

Q. I will re-state the question—will you name all the Company supervisors you observed during the time you were down there?

A. I recognized Mr. Munro, Mr. Pavao, Mr. Fernandez, Mr. Bilson, Mr. Kluge, Mr. Fred Johnson, Mr. Harrington, Capt. J. Calhau. I am not sure of Capt. Calhau, the Mana may not have arrived by then. That's all I can recall off-hand. Oh yes, Mr. Marquez was there. Mr. Fraser was there.

Q. In other words, that is all the Company people you recall? Did any of the Company people present ask you to take pictures? A. Yes.

Q. Who?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. Mr. Bilson asked me if I would take some pictures. He had two cameras and I said sure I would.

Q. In other words, he asked you specifically to take pictures? A. That's right.

Q. How many police officers were present at the time you went down there?

A. I would say five or six.

Q. Did you recognize any of them by sight or name? A. I did.

Q. Will you state the names of those whom you recognized?

A. Officer Takahama, Lt. Medeiros, Mr. Freitas, I do not know his capacity, from Maui, and the gentleman who testified the first day, a police officer in uniform, I do not know his name, a Mr. Seabury and a Mr. Murayama. He was in civilian clothes. I know he is a police officer because I played golf with him. That is all I can recall.

Q. Did any of these police officers, at any time that you observed, read the riot act to the crowd?

A. What do you mean by the riot act? [26]

Q. By riot act I mean the law which says the police are supposed to read, "You are hereby unlawfully assembled," etc.,—(explains statute.)

A. That I do not know.

Q. Well, you were present at all times weren't you? A. Yes.

Q. Did the police officers address the crowd as a whole?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. When the men broke across where they started to load the bins I saw them definitely try to stop the crowd from rushing.

Q. I am asking you if they spoke to the crowd as a whole.

A. That I do not know.

Q. You did not observe any police officer ordering any crowd to go home before or during the time the incident was happening?

A. The officers told them to get back.

Q. Did you at any time hear any police officer order the crowd to disperse or go home?

A. The answer is no.

Q. You stated that there were about twenty-four people present at about 3:20?

A. That's my estimate.

Q. Did any people come down after that?

A. Yes.

Q. About how many and how much after?

A. I would estimate 100 to 150 people arrived later.

Mr. Crckett: Court please, counsel has asked for an interpreter and is not using the interpreter. It is a big disadvantage when I have a question to ask and I think she should labor under the same disadvantage. [27]

Mrs. Bouslog: The interpreter is here for the defendants, but the answer does not always have to be translated. Mr. Heminger, when did the people come down, before or after the alleged incident?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. The 100 to 150 came down before the alleged incident happened.

Q. What time did you leave the Harbor?

A. I left the Harbor some time after five o'clock.

Q. About how long was that after the incident was over?

A. I would have to guess,—15 to 20 minutes, I am not sure.

Q. Your best guess is 15 to 20 minutes?

A. It would be just a guess, probably about 20 minutes.

Q. Did you observe any people coming down after the incident was over? A. I did.

Q. How many?

A. I observed one small truck load of men.

Q. Is that all? A. That's all I noticed.

Q. About how many people would you estimate were in that truck?

A. Possibly twenty, more or less.

Q. You said a while ago that you observed while the incident was going on there were some people who were standing completely outside the kapu line?

A. I believe there were some people standing outside the kapu line.

Q. That's along the stone wall? A. Yes.

Mr. Crockett: You mentioned that the men broke across. What did the police officers do when they started breaking across?

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

A. As I recall, the police officers made a desperate attempt to stop the crowd from going across.

Q. And at this time when they broke across the line, was any warning given that would cause a person to believe it was going to happen or did it happen suddenly?

A. As I recall it, it seemed to me, I am quite certain that men with arm bands marked "union police" started to talk to the crowd. I did not understand it as it was in a foreign tongue. There was some excitement there and I felt something was going to happen.

Mrs. Bouslog: May I move the answer be stricken. What the witness believes is incompetent.

Mr. Crockett: No objection. Was there any warning? Was the motion made rather sudden. Counsel has asked whether the police read the riot act. Was there anything that happened which would indicate something was about to happen?

(Argument between counsel on this question.)

Mrs. Bouslog: I believe the question is improper, but will leave it to the Court.

The Court: Objection overruled.

A. To answer that question, the crowd started to surge forward and as I recall it, the Assistant Chief of Police tried to get them to go back. They broke shortly after that.

Mr. Crockett: That's all.

Exhibit K—(Continued)

(Testimony of Murray V. Heminger.)

Mrs. Bouslog: The Assistant Chief of Police attempted to get them to go back across the kapu line—was this the “desperate attempt”? What actually did the Chief do?

A. The Chief tried to quiet them down and tried to talk to them and actually signalled to them not to come forward, that is all I recall seeing. [29]

Mrs. Bouslog: That’s all.

Mr. Crockett: That’s all.

ANTHONY D. FERNANDEZ

being first duly sworn, testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name?

A. Anthony D. Fernandez.

Q. Where do you live?

A. Kaumalapau, Lanai.

Q. Now when I ask you a question, will you please pause a bit to give the interpreter a chance to interpret the question. Where are you employed?

A. Down at Kaumalapau wharf.

Q. Were you down at Kaumalapau on July 14, 1947?

A. I was.

Q. Do you recall in the afternoon say between three or four o’clock an incident happening there where persons engaged in picketing rushed forward

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

and made a charge on the pineapple bins and other things of that nature? A. I do.

Q. What were you doing when that happened?

A. I was operating the crane.

Q. Was that after the barge came in?

A. Yes.

Q. Tell the Court just what happened to you, if anything, from the time the barge came in, in connection with this incident that I just mentioned.

The Court: Do not make your statements too long so that it will be easier to translate.

A. When the barge came in, I went on the crane to load the pineapple bins from the wharf to the barge. As soon as I hooked on to the first bin, before it was lifted from the dock, people were around rushing on the bin. I remained on the crane until some of the men came up to [30] attack me, then I left the crane and went down and stood on the wharf. When I got down from the crane I stood around and some of the men came for me, grabbed me from the back and started shoving me around. Before I knew it, there was a whole flock of men all around me, some of them punching, pulling, shoving. I forced my way down to the smaller wharf. When I got down to the small wharf these men that were chasing me stopped so I went back and talked to some of them. I told them everything was all "pau" that we won't be loading the barge. After I got through they started after me again.

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

I got to the edge of the wharf. They were shouting and instead of going flat I went overboard. When I got in the water I started swimming towards the small boat that was on the side of the barge. I climbed up on the smaller boat and remained there until we took the barge out to the tow boat.

Q. While you were in the water did anything happen to you?

A. While I was in the water someone threw pineapples at me.

Q. What did you do then when they threw pineapples at you? A. I dived underneath.

Q. Did you recognize and can you identify any of the persons who climbed up on the crane which you were operating? A. Only one.

Q. Who was that? A. John Maile.

Q. Did you identify or did you recognize any of the other persons who were present during or since this trouble? [31]

Mrs. Bouslog: I object. It is all right to ask for identification, but counsel cannot ask if he identified any of them since. He is supposed to testify to what he saw and observed.

Q. I am asking if he identified any persons who were there at that time.

Mrs. Bouslog: That is all right.

A. A few.

Q. Will you give us the names of those persons?

A. Pavao, "Buck" Manriki, Fred Johnson, Har-

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

rington, Bilson, Sgt. Takahama, Asst. Chief Freitas, Lt. Medeiros, Capt. Seabury.

Q. Any others you recognized?

A. There was a little group of men sitting on the sea wall quite a distance away from where we were supposed to be working.

Q. Do you know the names of any of these men who were there?

A. There was John Maile. There were so many of them, I could not see very well to identify distinctly. It's been so long. There was Alipio Sajor.

Q. Where did you see Alipio Sajor?

A. He was standing next to me, right next to the crane.

Q. What time was he standing next to you, was that at the time the trouble happened, or before, or afterward?

A. While the trouble was going on.

Q. Do you recall any others that were there while the trouble was going on?

A. There was this guy by the name "Gigo."

Q. Gigo,—where was he, where did you see him?

Mrs. Bouslog: May it please the Court, there is no showing that he is one of the—oh, all right, go ahead.

A. He was on a table next to the pineapple bin.

Q. Do you recall any others?

A. Before or after the trouble?

Q. Well, do you recall any who were there immediately before the trouble?

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

A. There were two steward trucks there. But there was so big a group of men I could not very well identify them. My mind was set on loading the barge. I did not take notice very much of the individuals.

Q. Is that all you are able to recall right now?

A. That's right.

Q. You know a man by the name of Kaopuiki?

A. I do.

Q. What is his first name?

A. We have three working for us down at the Harbor, one is Isaac, one Harry, and Daniel.

Q. Do you recall seeing Daniel Kaopuiki at any time that afternoon?

Mrs. Bouslog: May it please the Court, this witness has identified all the people he recognized and now the prosecution is trying to coach his own witness, and the question should not be allowed. That
ness, and hte question should not be allowed. That is all that is competent for this Court to receive.

Mr. Crockett: When a witness has exhausted his memory the prosecution is allowed to question him to refresh his memory. This is an important question, your Honor.

Mrs. Bouslog: I would like counsel to submit his authorities. Might we have a brief recess?

Mr. Crockett: I do not need a recess, I can find it in a minute. (Reads from law book. Further argument.)

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

Mrs. Bouslog: But this witness has not indicated his memory needs refreshing. He stated his mind was on the pineapple barge. This section that Mr. Crockett read [33] has no application to the case in which the witness has testified directly that he has named all the people he could identify. Are you impeaching your own witness?

Mr. Crockett: If it becomes necessary, I may have to. If he still maintains he did not see these people I may have to. I do not think it will be necessary to go that far.

Mrs. Bouslog: The prosecution does not indicate his intention to impeach his own witness. What he wants to do is refresh his memory. The witness has stated that he has thought of all the names of the people who were there on that particular occasion. Since Mr. Crockett's witness has so testified, Mr. Crockett is bound by that testimony unless he wants to impeach his own witness. Will you impeach your own witness?

(Further argument.)

Mrs. Bouslog: The ruling in criminal trials, and in civil trials is that the person using a witness or calling a witness is bound by the testimony. (Reads from law book.)

Mr. Crockett: Then I will if it becomes necessary.

Mrs. Bouslog: (Reads from law book.) The

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

Court must give permission to introduce evidence and when the Court has given permission then Mr. Crockett may——

Mr. Crockett: Just a minute—will you read the rest of that section there? (Counsel reads from Sec. 9845, R.L.H. '45. Page 1314.)

Mrs. Bouslog: You should ask leave of the Court to impeach your own witness and when you have been given permission then you may proceed to follow the statute, otherwise——

Mr. Crockett: I ask leave to impeach this witness, as he has previously made a statement that he recognized two other persons, Kaopuiki and Pokipala.

The Court: You are so allowed. [34]

Mr. Crockett: Do you recall, Mr. Fernandez, making a statement to the police that you also recognized Kaopuiki?

Mrs. Bouslog: I believe you are not following the statute.

Mr. Crockett: I know what the statute is. I am doing so,—all in its proper time and place.

Mrs. Bouslog: (Reads from law book.)

Mr. Fernandez: I do.

Mr. Crockett: Is it a fact that you did recognize Kaopuiki at that time and place?

A. I did.

Q. Whereabouts did you see Kaopuiki?

A. He was sitting on the sea wall.

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

Q. About what time in relation to the time you say you were operating the crane, before or after?

A. Before.

Q. How long before?

A. About half an hour before.

Q. Which Kaopuiki was that?

A. Daniel Kaopuiki.

Q. He is present here in Court?

A. He is.

Q. Can you point him out to the Court?

A. He is there in the white shirt, last seat.

(Points him out.)

Q. Will you go and put your hand on his shoulder. (Witness indicates third man from the aisle sitting in the rear seat, wearing a white shirt, and puts hand on shoulder.)

Q. Did you make a statement to the police officers that you recognized a man by the name of Pokipala? A. Yes.

Q. Where did you see him?

A. Sitting on the sea wall.

Q. And about what time was that, when you saw Pokipala? [35] How long before or after the incident which happened to you?

A. About half an hour after.

Q. Is Pokipala present here? A. He is.

Q. Will you point him out to the Court?

A. He is sitting here. Witness goes to Pokipala and places hand on shoulder.

Exhibit K—(Continued)

(Testimony of Anthony D. Fernandez.)

Q. You mentioned Alipio Sajor? Did you see him?

Mrs. Bouslog: If the Court please, Mr. Crockett has impeached this witness. He is now going back to direct examination. After impeaching this witness he is not permitted to resume direct examination.

Mr. Crockett: Why do you say I am not permitted to resume direct examination?

Mrs. Bouslog: Well, I cannot see, at this point,—

Mr. Crockett: Well, then, proceed with cross-examination.

Mrs. Bouslog: No questions.

Mr. Crockett: We will ask for a recess.

The Court: We will take a short recess.

(Court recessed at 3:25 p.m. Reconvened at 3:40 p.m.)

KIICHI TAKAHAMA

being first duly sworn, testified as follows:

Direct Examination

Q. What is your name?

A. Kiichi Takahama.

Q. What is your position?

A. Police Officer, Maui County Police.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Are you stationed on the Island of Lanai?

A. Yes, I am.

Q. Were you here on the 14th day of July, 1947?

A. Yes, I was. [36]

Q. Were you down at Kaumalapau landing between the hours of three and five on that date?

A. I was.

Q. About what time did you go down there?

A. About 3:30 p.m.

Q. And who did you go down there with?

A. I was with Asst. Chief Freitas, Capt. Seabury, Lt. Medeiros, Lt. DeMello, Officer Murayama.

Q. When you arrived at the wharf did you notice whether or not any of the employees of the Hawaiian Pineapple Company were already there, working there?

A. I did notice some of them were there.

Q. And at the time you arrived, what employees did you see present? I am referring to working there when you arrived?

A. I have seen the following persons, Anthony Fernandez, Manuel Pavao, Jerry Harrington, Fred Johnson.

Q. Any others? Do you recall any others? What was Mr. Fernandez doing when you arrived there?

A. He was tending to the barge that just got in.

Q. When you arrived there did you notice whether or not there were any large group of men in a picket line or anything of that nature?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I did notice about 150 men.

Q. Were they there before you got there or did they come after you got there?

A. They got there shortly after we got there.

Q. How did they arrive there?

A. I have seen the cars coming down the wharf. The men alighted from the cars and gathered along the stone wall, stretched out for about fifty yards.

Q. Did you notice a kapu sign there, that is, anywhere nearby on the wharf?

A. I did notice a sign over there.

Q. From that kapu sign there was a white line painted [37] somewhere?

A. Yes, the kapu sign was there and a white line was marked over there in the area in which the people were working.

Q. When these people arrived, as you have just testified, and strung along a line of fifty feet or more, were they anywhere near the kapu sign or white line. What was their position in relation to that sign or line?

A. These men were all on the stone wall. There is a distance between the sign and stone wall of about 100 feet. It was about 4:30 p.m. that the men got across the kapu sign and into the working area.

Q. When they first arrived what did they do? Where did they stay with respect to the sign and the line?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. When they first arrived they gathered in about two files stretched about fifty yards from the Mana wharf towards the northern section of the stone wall. There were several union police with arm bands.

Q. What were they doing at that time?

A. Some of them were standing, some sitting down.

Q. Were any engaged in marching, moving around at all?

A. The men with the arm bands were doing most of the walking up and down. The men gathered over there were in a steady manner, some talking, some moving about.

Q. And up until about 4:30 p.m. they remained on the unrestricted side of the kapu line?

A. Yes, they were on the unrestricted side of the kapu line.

Q. Were you there when the barge came in and was docking alongside the wharf?

A. Yes, I was there. [38]

Q. Was there any noticeable change in what the crowd did immediately after the barge was docked from what they were doing immediately prior to that time?

A. Yes, these men gathered along the sea wall seemed manifestly excited. Most of them were talking in Filipino, so I do not know what they were talking about.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. And what, if anything, did they do besides talk in an excited manner?

A. As soon as the barge got in and got moored the men on the northern end of the stone wall were converging in a downward movement towards the pineapple bins stacked inside the white line.

Q. And did they form any line or anything of that nature?

A. They were in a long string or line, it is hard to say if they were in a line in a group stretched for about fifty yards.

Q. And then, what happened after that?

A. About 4:30 p.m. Sonny Fernandez was operating the crane. He was about fifty feet from us. We were standing outside the white line. The spreader was being put on the bins, about eight bins there. Some of the men were working on top of the bins. As soon as the men were attempting to hook up the bin to the pineapple spreaders these men rushed into the white line, that's the men who were standing along the sea wall. They rushed inside the white line and some of them got on top of the pineapple bins.

Q. You mentioned that Sonny Fernandez was operating the crane. Was he the one just in here a few minutes ago as a witness?

A. Yes, he is the person.

Q. Was any person up on top of the bin?

A. The only person I recognized on top of the bin was Harrington. [39]

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. When these men, as you say, rushed forward, what happened?

A. Sonny Fernandez was operating the crane inside at the time of the rush from these men and I saw John Maile get on top of the crane and I seen Sonny run down the makai side of the crane and he got in the midst of these men who rushed into the white line.

Q. Just before this rush occurred did you notice whether or not any person gave any kind of signal either by voice or motion which started the rush.

A. This fellow I recognized over there was Diego Barbosa.

Q. Does he have any other name or nickname?

A. I have known him as "Gigo."

Q. Do you know whether or not he is one of the defendants at present before this Court?

A. He is.

Q. Isn't he one of the defendants already committed to the Grand Jury? Have you got that clearly in mind?

A. He has already been committed.

Q. So that he is not one of the defendants present before the Court in this case?

A. No.

Q. What kind of sign did "Gigo" give to start this off?

A. "Gigo" was talking in Filipino, which I do not understand, and he was followed by several others. They all got into the white line.

Q. Did you see him make any sign besides talking?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. No, I did not see any signs. I saw him talking.

Q. Now, you have mentioned, getting to the point where you saw John Maile climb up on the crane. What happened after he climbed up on the crane?

A. After John Maile got on top of the crane, Sonny [40] Fernandez ran down. He was running down towards the makai side of the wharf and got into the group of men who rushed into the white line.

Q. What happened after that?

A. Well, the men who got into the white line were chasing after Fernandez and Fernandez was making an effort to escape. He dodged here and there among the men and finally jumped into the water.

Q. What happened after he jumped into the water?

A. After Fernandez jumped into the water the men who rushed into the white line they were seen all along the wharf area near the crane and inside of the barge that was docked and some of them were still on the bins, the pineapple bins.

Q. Did you see anything happen to anybody on the bin? A. That I did not see.

Q. What else did you see which happened or occurred at that time?

A. After Fernandez got in the water I have seen the eight bins on the wharf and the side doors were

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

opened and the pineapples were left on the ground and on the wharf and some of the pineapples were thrown in the wharf area.

Q. What other persons did you recognize there during this incident?

A. The men I recognized in the incident inside of the white line were Diego Barbosa, A. Basoliso, George Ramaila, Jose Sotelo, Victor Degamo, Daniel Casil, John Maile. These are the men I have seen inside the white line.

Q. Can you tell us what, if anything, the ones you mentioned did,—for instance, I think you first mentioned "Gigo,"—did you notice what he was doing during this affair? [41]

Mrs. Bouslog: It appears from the evidence that Diego Barbosa is not a defendant in this case. In the interest of time I would like to dispense with what he did, if he is not before the Court.

Mr. Crockett: If the Court please, it is part of the *res gestae*. He took part in this offense and was engaged in it and we have a right to show what happened.

The Court: Objection over-ruled.

A. Diego Barbosa was first seen hitting several men behind him and he was seen rushing into the white line where the kapu line was.

Mrs. Bouslog: I am going to object to the witness saying what was seen. He should state what he saw.

Mr. Crockett: No objection.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I saw Diego Barbosa rushing into the white line, followed by several other men and thereafter I lost him in the crowd that were mingled over there.

Q. And the other you mentioned, the rest that you mentioned, I believe it was Basiliso Arruiza?

A. I saw him inside the white line where the kapu sign was placed.

Q. What was he doing inside the white line?

A. I saw him running here and there. He had a hat on at the time. I lost him in the crowd.

Q. Now, the next man, Victor Degamo? What did you see him do? •

A. I saw Victor Degamo inside the white line. He grabbed a piece of lumber, 2x4, about seven feet long. He grabbed this lumber so I took it away from him. He agreed to that and then he got lost in the crowd.

Q. And Ramaila, how about him?

A. I saw George Ramaila inside the white line where the kapu line was placed and I lost him in the crowd. [42]

Q. I think the next one was Sotelo?

A. I saw Sotelo near Victor Degamo when he had the stick. Sotelo was nearby. I lost him also.

Q. And Casil?

A. I saw him inside the group when the men were running here and there inside the white line.

Q. And Maile?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I saw John Maile get on top of the crane from the mauka side where Sonny Fernandez was inside the crane and as soon as Sonny Fernandez got off the crane I lost sight of him.

Mr. Crockett: Shall we take a recess? It is 4:00 p.m.?

The Court: We will adjourn until tomorrow at 10:00 a.m.

Friday, August 29th, 1947

(Court convened at 10:10 a.m.)

The Court: Are you ready to proceed?

Mrs. Bouslog: We are ready to proceed. We will stipulate that all the defendants are present from my roll call of five minutes ago.

Mr. Crockett: We will so stipulate. We are ready to proceed, Court please, on direct examination of Mr. Takahama. Call Mr. Takahama.

Mrs. Bouslog: Is there any way we can have benches brought in? I would like to have all the defendants in here.

The Court: That is all the benches we have.

Mr. Crockett: Now, Mr. Takahama, you gave us some names yesterday of the persons you saw during the incident which you described. Were there any other persons that you identified while down there? That is, immediately after the incident or at any other time?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: I am going to object to the form of the question, "were there any other people you identified there or any other time"? We are interested in the alleged [43] offense which was taking place.

Mr. Crockett: Court please, if the answer is "yes" the Prosecution will connect up and show the time and place—I can't put everything in one question.

The Court: Objection over-ruled.

Q. Answer the question.

A. Right after the incident when the men were on their way back to the stone wall, I have taken down some notes to identify the persons over there and they are as follows:

Q. Well, wait a minute. You did identify some persons? A. I did.

Q. Will you give the names of these persons?

A. The names are Sam Shin, Hiroshi Oshiro.

Q. Oshiro, what is his other name?

A. "Molokai."

Q. Mariano Dugay, Vicente Saloricman.

Mrs. Bouslog: May it please the Court, I want to say at this point that Mr. Crockett said he was going to connect up his question before asking witness to give the names. He did not so connect up the question he asked nor is it clear from the testimony of the witness whether he knew these persons by sight or what the form of identification was. The

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

connecting up should be shown and these persons should be identified. He should identify these persons at the time because he saw them at the time.

Mr. Crockett: I did connect up. I asked him if this was immediately after. Anyway this is a matter for cross-examination and it is not necessary to go into detail.

(Argument on this point.)

Mrs. Bouslog: I ask the Court to require the prosecution to show that these names that are being read off are persons known to the witness whom he saw there and could [44] identify of his own knowledge at the time the incident occurred.

Mr. Crockett: I am willing to ask him the question. Did you identify them of your own knowledge. How did you identify them, Mr. Takahama?

A. Yes, I did identify these people by my own knowledge.

Q. I might suggest after we get the names of these persons. Prosecution will go into other details later.

A. Andres Velasco, Pablo Pineda, Masao Gima, Saturnino Gaspar, Kenneth Matsumoto, Mitsui Shimizu, Riyoji Shimizu, Mitsuyuki Oyama, Guilherme Alboro, Kazuyuki Hashimoto, Nobuteru Tomita, Nobuo Honda, Honorio Collado, Narcisco Sipe, Yoshio Ginoza, Frank Laborte, James Aikala, Daniel Kaopuiki, Asing Aho, Alan Nitta, Shigeyuki Matsuura, Midori Oda.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Can you recall any others?

A. I don't think I can recall any others. That's all I can remember at present.

Mrs. Bouslog: Perhaps if the prosecution would pass the complaint you would be able to recall.

Q. Now how do you happen to recognize these people or know their names?

A. I have been here four years and have become acquainted with these people as an officer. I know them by sight and where they are living.

Q. So that these people whose names you have given, whom you recognized, is from knowledge gained in the years you have been a police officer here?

A. That is right.

Mr. Crockett: May witness be excused a minute to get some exhibits?

The Court: He may.

(Witness brings in exhibits.)

Mr. Crockett: Court please, these pictures were introduced [45] in evidence as Exhibit "B" for the prosecution and pasted in the book. Did you do that?

A. Yes.

Q. The numbers are the same numbers that are on the back? These numbers are 1 to 55. Not consecutive, as some have been omitted?

A. Yes.

Q. Now Mr. Takahama, showing you the first set containing eight pictures, numbers 1, 2, 3, 4, 5, 7, 9 and 11. Will you look at these pictures one by

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

one and see if in those pictures you recognize any of the persons you have named?

Mrs. Bouslog: I object to the question. He has not yet identified the individuals, he has just testified that he pasted the pictures.

Mr. Crockett: I will withdraw it, to save time. These names that you gave us, will you stand up and look around the Courtroom and see if you can identify the persons named? We won't follow the same order in which you gave them, but will you point out Guilherme Alboro? Defendant Guilherme Alboro, will you stand up?

(Witness unwilling to arise in Courtroom.)

Mrs. Bouslog: If he puts his hand on your shoulder, stand up. The witness has testified from memory a long list of names and is calling off a list of names for purposes of identification.

(Defendant Alboro stands.)

Mr. Crockett: Okeh, we will do that. I do not agree with counsel but to save time will agree and will ask him to point out the defendants. I will do anything counsel wishes to save the time of the men. [46]

A. Sam Shin. (Points him out in Court room.)

Q. The second man there on the front porch?

A. Yes.

Q. Hiroshi Oshiro. (Witness points him out.)

Mariano Dugay.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. He is the third man sitting there without a shirt?

A. Yes. Vicente Saloricman. (Points out this defendant.)

Q. The man standing up in the back? A. Yes.

A. Andres Velasco. (Witness points him out by placing hand on defendant's shoulder.)

Q. Has he any other name? Any nickname?

A. No, just Andres Velasco. (Calls name of Pablo Pineda.)

Q. Is Pablo Pineda present?

Mr. Bouslog: If we may take a short recess I will look for the defendant.

Court recesses at 10:35 a.m. Reconvenes at 10:38 a.m.

Mrs. Bouslog: Your Honor, all defendants have been present at all times.

Mr. Crockett: We are ready to proceed.

Mr. Takahama: Saturnino Gasper. (Witness places hand on this defendant's shoulder.) Masao Gima. (Witness places hand on defendant's shoulder.)

Q. Would you tell us the bench he is sitting on?

A. He is the second man on the second bench. I am looking for Kenneth Matsumoto, but he is not here. Mitsuo Shimizu. (Points out this defendant.) He is the first one on the side bench. Here is Kenneth Matsumoto. (Points out this defendant in the same manner.)

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. The one with the dark glasses on? A. Yes.

Mrs. Bouslog: It is not a disguise, Mr. Crockett.

A. Riyoji Shimizu, sitting on the third bench. Mitsuyuki Oyama, side bench. Guilherme Alboro, side bench, Kazuichi Hashimoto, and Nobuteru Tomita. (Points out these defendants.)

Q. The one there with his back to the Court?

A. Yes. [47]

A. Nobuo Honda. In the center, side bench. (Places hand on defendant's shoulder.) Honorio Collado. (Points out this defendant by placing hand on shoulder.)

Q. The man sitting by the door in the checked shirt, chewing gum?

A. Yes. Narcisso Sipe. Sitting on the number five bench. Yoshio Ginoza. (Places hand on shoulder, outside on porch.) Pablo Pineda is out here. (Identifies this defendant by placing hand on shoulder.)

Q. Will you ask him to come by the door?

A. Pablo Pineda (witness places hand on shoulder.) Frank Laborte.

Q. He is not one of the defendants.

A. The Harbor boys, James Aikala and Daniel Kaopuiki.

Q. Court please, the records show these two defendants are not named in the complaint. You mentioned some persons yesterday that you saw within the white line at about the beginning of the

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

incident. Do you recall those names that you gave us at that time?

A. The persons seen in the white line were Diego Barbosa, Basoliso Arruiza and George Ramaila.

Q. Can you point Ramaila out to the Court, please?

A. On the first bench there, George Ramaila.

Q. In the khaki shirt? A. Yes.

Q. Who else did you mention yesterday?

A. Basoliso Arruiza.

Q. I mean in addition to those you mentioned.

A. Daniel Casil.

Q. Will you point him out?

A. This is Daniel Casil. (Witness points out this defendant.) [48]

Q. The man who just stepped in the door?

A. Yes.

Q. Okeh. Do you recall the other persons you mentioned yesterday? A. John Maile.

Q. He is not included in this case is he?

A. No.

Q. And the other persons you mentioned? Do you remember any other persons you mentioned yesterday?

A. Jose Sotelo. (Points Sotelo out by placing hand on shoulder.)

Q. The man on the third bench? A. Yes.

Q. In the last list of names you mentioned Daniel Kaopuiki, Jr. Can you point him out?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: That's right, when he forgets the names, you give him the names.

Mr. Crockett: He mentioned the names. I have a right to call them.

A. He is sitting here in the white shirt. (Witness places hand on shoulder.)

Q. Coming back now to the pictures which were offered in evidence as Prosecution's Exhibit "B", referring you to pictures, numbered 1, 2, 3, 4, 5, 7, 9 and 11. I will ask you to examine that sheet and take the pictures, one by one, and state whether or not any of the persons whom you have named you are able to recognize in those pictures?

Mrs. Bouslog: May I see the pictures first before you go on? (Prosecution hands defense counsel the pictures.)

A. Number 1. Hiroshi Oshiro.

Mrs. Bouslog: Are you going to have a showing as to what time these pictures were taken? [49]

Mr. Crockett: That's been testified to by Lt. DeMello.

Mrs. Bouslog: But some of these are not pictures of the alleged incident.

Mr. Crockett: They included more, but the pictures offered in evidence are only of the alleged incident. I am showing you only the pictures which are offered in evidence at the present time. Do you mind pointing out, counting from the left the person you pointed out as Oshiro?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. Number 1. That's Oshiro, third from the left, facing the camera directly. In picture number 3, Victor Guillermo. He is the one on the extreme right, looking to right. (Defendants at this time, (some of the defendants) called attention to the fact that a witness is present in the Court. Mr. Crockett then requests that all witnesses leave the Court-room.)

A. In picture number 4, Nobuteru Tomita. He is sitting in the front row about in the center of the picture.

Mrs. Bouslog: He is on the left or right?

A. In the picture he is on the left. In number 11, Diego Barbosa and Pablo Pineda. Pablo is in front of Diego Barbosa, Barbosa in the back of Pablo. Both have arm bands on the left arms.

Q. Would you examine again picture number 2 and see if there is any person there you can identify?

A. I am sorry, the picture is not too clear.

Q. Now if you are finished with that sheet, showing you the second sheet containing pictures numbers 12 to 19. Are any of the defendants there?

A. Picture number 14. Andres Velasco on the extreme left of the picture and Narcisso Sipe. He is looking away from the camera. [50]

A. He (Sipe) is pictured about in the center next to Andres Velasco. In picture number 15, Jose Carronza is pictured in the center in the back.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: Facing the camera?

A. The party facing the camera.

Mrs. Bouslog: There are two. Is he the bare-headed one?

A. With his hair parted on the left side of his head. Picture number 19, Andres Velasco, white shirt, pictured on the left side of the picture. He is number four and Diego Barbosa, he is in front of the men gathered there.

Mrs. Bouslog: Take Andres Velasco. The description is not definite so that I could tell what one you meant.

A. On the left side of the picture, fourth man, white shirt, left arm on his hip. In the same picture Diego Barbosa is pictured in the center and in front of the men, standing with his left foot forward.

Mrs. Bouslog: Diego Barbosa is not a defendant in this case.

Mr. Crockett: Now referring to the third sheet containing pictures 20 to 27 inclusive.

A. Picture number 21, John Maile. He has a cap on his head and is facing towards right. Picture number 24, Basiliso Arruiza, white hat, standing beside Andres Velasco. Basiliso Arruiza is on the right of Andres Velasco.

Q. Now the next sheet contains pictures 29 to 38, with number 30 and number 37 out. Will you examine this and see if there is any person you can recognize?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I do not recognize any of these.

Q. Now the next, pictures numbers 39, 44, 45, 46, 47, 48, 49 and 50, will you examine those?

A. Picture number 49, Diego Barbosa on the extreme right. His right arm is up in the air. [51]

Q. Picture number 49 also shows a person in uniform, can you identify that person?

A. That's myself.

Q. In your uniform as a police officer?

A. Yes.

Q. At the time when your picture was taken do you recall approximately where you were standing, inside or outside the kapu line?

A. This was outside the kapu line, after the incident.

Q. What were they doing at this time?

A. They were getting back to the stone wall.

Q. Showing you the last sheet of this series containing pictures numbers 52 to 55 inclusive. Were any of these defendants in these pictures? Do you recognize any of them?

A. None. (Pictures passed to defense counsel who passed them to defendants for examination.)

Q. Showing you a new sheet, a part of Exhibit "D" for the prosecution, referring to the picture number 78, do you recognize any of the defendants in that picture?

Mrs. Bouslog: You called his attention to number 78?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mr. Crockett: Just number 78.

A. In number 78, Honorio Collado and Basoliso Arruiza on the extreme right with his hat on.

Q. You mentioned Jose Carronza. Could you point him out to us here in the Court room?

A. This man, standing here by the window is Jose Carronza.

Q. You also mentioned Victor Guillermo, will you point him out, please?

A. He is here with the yellow shirt, on the last bench, with the glasses on. [52]

Q. Would you examine picture number 3 again and——

Mrs. Bouslog: I object to the question, the witness has been asked twice to go through the first list of pictures, and is covering the same ground, with a little coaching from the prosecution.

Mr. Crockett: It is permissible to refresh a person's memory. The prosecution has a perfect right to again examine the subject to see if something has been overlooked.

The Court: Objection over-ruled.

Q. Proceed.

A. Simon Hermano, fourth person from the right.

Q. Can you check and see if Simon Hermano is here in the Court room?

A. Simon Hermano, here on the second bench in the green shirt.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

(Witness leaves seat to look for the various defendants and when he finds them, places hand on shoulder of defendants.)

Q. Please take your seat. Cross examine.

Mrs. Bouslog: Your Honor, because of the difficulty of consulting with my clients when you have forty or more, and the fact that a client usually sits by you so that you can consult with the client, I would like to have a recess now to talk with them and have a little earlier lunch hour, if that is satisfactory, and reconvene at 1:00 p.m.

Mr. Crockett: Just before Court takes a recess, I would like to suggest that the witness be excused and the Court call the roll to see if the witness has identified the defendants properly.

Mrs. Bouslog: I think all witnesses are present as stipulated in the record. Your Honor, a defendant has a right to sit by his attorney and consult with his attorney regarding facts that are brought up so that——

Mr. Crockett: I have no objection to the recess. [53]

Mrs. Bouslog: I would like to have the duplicate set of the Court exhibits made available to me during the recess.

Mr. Crockett: No objection to your taking the Court exhibits.

The Court: If there is no objection we will take a recess until 1:30 p.m.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: How many witnesses do you have this afternoon. This is the sixth, I believe?

Mr. Crockett: I think I have about ten.

Mrs. Bouslog: But Mr. DeMello has not been cross-examined. Is he available today?

A. No, but he might be here. We are ready to proceed with about three witnesses. They are standing by.

Mrs. Bouslog: I want to go ahead until we finish. I would like to reconvene as soon as possible as I have work in Honolulu. I am sorry about the necessity for the recess at this time, but do not see how I can cross examine without having talked to my clients.

Court recessed at 11:20 a.m. Mrs. Bouslog takes Prosecution's Exhibits "B", "C", "D" and "E" for study during recess. Court reconvened at 1:30 p.m. Counsel for defendants returns exhibits.

Mrs. Bouslog: Could you make the map available to me for cross-examination?

Mr. Crockett: Certainly.

The Court: Are you ready to proceed?

Mrs. Bouslog: We are ready to proceed, Your Honor.

Mr. Crockett: We are ready to proceed, Your Honor.

The Court: Please have that defendant face the Court, the one with his back to the Court. [54]

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Cross Examination

Mrs. Bouslog: How old are you? A. 29.

Q. How long have you lived on Lanai?

A. I've been an officer for four years.

Q. How long have you lived on Lanai?

A. Fifteen years.

Q. In other words, you came to Lanai when you were fourteen years old? A. No.

Q. How old were you when you came to Lanai?

A. I have no idea.

Q. How long have you lived on the Island here?

A. About fifteen years.

Q. How old are you now? A. 29.

Q. Then you must have been fourteen when you came to Lanai?

A. I have been on other islands.

Q. When you first came you were fourteen?

A. That I don't know.

Q. Have you had a home or residence any place other than Lanai since you were fifteen?

A. Yes.

Q. Where else have you lived?

A. Honolulu.

Q. For how long?

A. About four years.

Q. Since you were fifteen how many years were you not living on Lanai?

A. That I don't know.

Q. Your Honor, I ask that you instruct the wit-

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

ness to assemble his remarkable memory and find out where he has lived since he was fifteen years old. [55]

The Court: Counsel did not ask that question.

Mr. Crockett: Not in those terms.

Mrs. Bouslog: Will you state the first time you came to Lanai—how old were you when you first came to Lanai?

A. I really do not know. I must have been about eight or nine years.

Q. Did you go to school on Lanai?

A. Yes.

Q. What grades.

A. First to ninth grades.

Q. Did you go to high school here?

A. Not on this island.

Q. Where did you go to high school?

A. Honolulu.

Q. When did you come back to Lanai? After you graduated from high school in Honolulu? What year.

A. 1937.

Q. And you have lived on Lanai since 1937?

A. Off and on.

Q. How much "off" and how much "on"?

A. I did not keep track of the date.

Q. You seem to have a good memory, almost a photographic memory for other things, it is strange you can't tell where you lived. You returned to Lanai in 1937? Where did you live in 1937?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. Lanai.

Q. 1938?

A. I could have been on Lanai, I moved out and came back again.

Q. I am asking you what you did.

A. I do not know that far. [56]

Q. That's only ten years ago, you were nineteen then?

A. I'm sorry, I do not know that.

Q. You have been on the Lanai police force for the last four years? What were you doing before that?

A. Wailuku police force.

Q. How long did you work for them?

A. About two years.

Q. During that time you lived in Wailuku, Maui?

A. That's right.

Q. What did you do before that? Where did you work before that?

A. Lanai.

Q. What did you do on Lanai?

A. Okamoto Store.

Q. What store?

A. Okamoto Store.

Q. During the times you recall being on Lanai did you know any of the defendants whose names you mentioned this morning?

A. Yes, I do, since I was working here four years.

Q. Did you know any of them before? Prior to the last four years?

A. Yes, I did.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. How many of the defendants did you positively identify this morning as being present at the Harbor on July 14th? A. About 33.

Q. Will you name them please?

A. Pardon.

Q. Will you name them, please? [57]

A. Diego Barbosa, Basoliso Arruiza, George Ramaila, Jose Sotelo, Victor Degamo, John Maile, Daniel Casil, Sam Shin, Hiroshi Oshiro, Andres Velasco, Vicente Saloricman, Mariano Dugay, Masao Gima, Pablo Pineda, Saturnino Gaspar, Kenneth Matsumoto, Itsuo Shimizu, Riyoji Shimizu, Honorio Collado, Mitsuyuki Oyama, Guilherme Alboro, Kazukuki Hashimoto, Nobuo Honda, Nobuteru Tomita, Yoshio Ginoza, Narcisso Sipe, James Aikala, Daniel Kaopuiki, Jr., Franke Laborte, Asing Aho, Shigeyuki Matsuura, Alan Nitta, Midori Oda.

Q. That's all you can recall having mentioned this morning?

A. That's all I can recall.

Q. How many of these defendants whom you have just named, those who are defendants, have you known for over ten years?

A. That I do not know.

Q. How long have you known George Ramaila?

A. Over four years.

Q. How long have you known Jose Sotelo?

A. About four years.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. How long have you known Daniel Casil?

A. About four years.

Q. How long have you known Sam Shin?

A. About four years.

Q. How long have you known Hiroshi Oshiro?

A. About four years.

Q. How long have you known Mariano Dugay?

A. About one year. [58]

Q. How long have you known Vicente Saloricman?
A. About four years.

Q. How long have you known Andres Velasco?

A. About four years.

Q. How long have you known Pablo Pineda?

A. About four years.

Q. How long have you known Masao Gima?

A. About one year.

Q. How long have you known Saturnino Gaspar?
A. About one year.

Q. How long have you known Kenneth Matsumoto?
A. About one year.

Q. How long have you known Itsuo Shimizu?

A. About four years.

Q. How long have you known Riyoji Shimizu?

A. About four years.

Q. How long have you known Mitsuyuki Oyama?

A. About four years.

Q. How long have you known Guilherme Alboro?

A. About one year.

Q. And Nobuteru Tomita?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. About four years.

Q. And Nobuo Honda?

A. About four years.

Q. Honorio Collado?

A. About one year.

Q. Narcisso Sipe? A. About four years.

Q. Yoshio Ginoza? A. About one year.

Q. Daniel Kaopuiki?

A. About four years. [59]

Q. Victor Guillermo.

A. About four years.

Q. Simon Hermano?

A. About one year.

Q. Jose Carronza? A. About one year.

Q. You have just testified that you have not known any of these defendants more than four years.

Mr. Crockett: I object. He did not testify that, he said, "about four years."

Q. Among these defendants the ones you have known longest is about four years?

A. About four years.

Q. You went to school from first to ninth grades, were any of these defendants in school with you? Do you remember them from school?

A. Well, they were not in my same class, I know that.

Q. Do you remember their names and faces?

A. Faces, maybe.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Well then, so you have known some of them a great deal longer than four years?

A. Well, that's right.

Q. Are any of these people neighbors of yours?

A. I do not find any of these in my block.

Q. You understand the nature and meaning of an oath and that if you state positively that something is true to the best of your knowledge and your observation that you can be punished for perjury for false statements proven false?

A. That's right.

Q. You have testified that you could positively identify as having been present at the Harbor at the time when this alleged incident occurred—and you are positive, [60] and you state, knowing you are under oath, you are positive all these people were present?

A. That's right.

Q. You saw them there? A. That's right.

Q. How many people you have identified belong to the union?

A. That I do not know.

Q. Will you name the people you knew were present who did not belong to the union?

Mr. Crockett: Just a minute—does counsel mean from the list or other people there at the time?

Q. Other people who were there at the time.

Mr. Crockett: How can the witness tell who belongs——

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Withdrew the question. Will you state the names of all people who were present apart from the ones named, police officers, company people, any other individuals you saw present.

A. Asst. Chief Freitas, Capt. Seabury, Lt. DeMello, Lt. Medeiros, Officer Murayama, Heminger, Mrs. Heminger, Anthony Fernandez, Harrington, Johnson, Pavao, Hector Munro, Buck Manriki, that's about all I can recall now.

Q. What time did you go down to the Harbor? On July 14th?

A. I was down there at about 3:30 p.m.

Q. You mean you arrived down there at 3:30?

A. Yes.

Q. Were you down at the Harbor in the morning? A. Yes, I was.

Q. Will you state the hours you were down there in the morning?

A. It was about 9:30 to 10 in the morning. [61]

Q. Were you accompanied by anyone when you went down in the morning?

A. Capt. Seabury and Lt. DeMello.

Q. Did you see anyone taking pictures at any time? A. No, I do not recall it.

Q. Did Lt. DeMello have a camera with him?

A. I do not recall.

Q. You do not recall seeing him take any pictures? Were you with Lt. DeMello?

A. I was with him.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. You do not recall if he took pictures?

A. I do not recall.

Q. How many people were down there when you went down there in the morning?

A. The Harbor boys were down there in a small circle.

Q. About how many?

A. About ten people.

Q. Who else was down there?

A. About ten of the Harbor boys were down there on the picket line.

Q. Were any of the company employees down there?

A. That I don't know.

Q. That is, supervisors?

A. I don't recall.

Q. Then your best recollection is that when you went down there in the morning between 9:30 and 10:00, there were about ten people on the picket line, and no company representatives to your recollection and yourself, DeMello and Seabury?

A. That's the approximate time.

Q. You went down there in the afternoon at 3:30? [62]

A. Yes.

Q. What time did you leave?

A. We left about 5—5:15.

Q. When you arrived down at the Harbor who were you with?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I just mentioned Asst. Chief Freitas, Capt. Seabury, Lt. DeMello, Lt. Medeiros, Officer Murayama, and myself.

Q. You came down in a car with them?

A. Yes.

Q. Did any of them have a camera?

A. DeMello.

Q. Was his the only camera? A. Yes.

Q. How many people were down there when you arrived at 3:30—that is, how many pickets were there?

A. That I do not know.

Q. Will you give me your best estimate?

A. About ten people.

Q. Then you say some more people arrived shortly after you arrived there? How long after you arrived?

A. Fifteen minutes after we arrived there.

Q. That would be about 3:45? Then how many more came up?

A. I counted 120 at the time, there were some other men in the northern section of the Harbor. I did not count them, but about 150 men gathered there.

Q. When you came down to the harbor at 3:30, what ships or boats were in the Harbor?

A. Mana.

Q. What was happening in relation to the Mana?

A. Unloading its freight.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. That was about 3:30? [63]

A. About that time.

Q. How long did it take the Mana to unload?

A. Say about fifteen minutes.

Q. Then the Mana, when you came down at 3:30 was the only boat?

A. That's all I think I seen.

Q. Were there any barges there when you arrived?

A. The barge came after the Mana left the dock.

Q. There was just one barge came in after the Mana left the dock? What time do you estimate the barge docked?

A. About 4:15.

Q. What time would you say the alleged incident of the boys crossing the kapu line began?

A. About 4:30 p.m.

Q. How quickly was it over?

A. In approximately about three minutes.

Q. Did you see any people, any pickets, come down after the incident was over?

A. I cannot recall.

Q. Any new pickets arrive? You could not say they did not arrive?

A. The men were walking here and there, coming down and going up, there were several cars there at the time.

Q. At any rate, you would not be able to swear whether two or three additional car loads arrived?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. No.

Q. Will you point out on this map where you were standing at the time. (Hands map to witness, who described place where he was standing.) [64]

Q. Your car was parked outside the kapu line?

A. Yes.

Q. Where were you standing when the alleged incident occurred?

A. I was standing there. (Points to map.)

Q. What did you do?

A. As soon as the men rushed into the line, I tried to prevent them from coming. Several men, Diego Barbosa and other men went in so I followed in——

Q. Will you show where you were, how far over here did you go?

A. Sonny Fernandez was on the crane, about there—(points on map) I went as far as the crane.

Q. Okeh, did you go down into the wharf?

A. Yes.

Q. Did you come up this way?

A. Yes, I was going back and forth. (Points to map, discusses position on map.)

Q. There were about eight bins over there?

A. About eight, yes.

Q. So that you would not be able to observe what was going on, on the other side while watching Fernandez?

A. That's right.

Q. While you were over here (points to map)

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

did you notice whether or not there were still a group of people along the sea wall who had not crossed the kapu line? A. That's right.

Q. Now, you have named about 33 people? Whom you have testified positively were down at the wharf? A. Yes. [65]

Q. Can you positively, and without any reservation, swear that all of these people were involved in the incident that happened?

Mr. Crockett: I object. He is merely testifying as to what he saw, why should he swear? (Argument.)

Mrs. Bouslog: I will withdraw the question. Can you positively identify all the individuals whom you mentioned this morning as being inside the kapu line at the time the alleged incident occurred?

A. The ones that I saw inside the kapu line at the time of the incident were Diego Barbosa, Basoliso Arruiza, George Ramaila, Jose Sotelo, Victor Degamo, Daniel Casil, John Maile.

Q. Will you state exactly what you saw George Ramaila doing inside the kapu line?

A. I saw George Ramaila when a group of men were walking back to the stone wall where they were before, I saw him walking with some of the men towards the stone wall.

Q. I don't understand.

A. There was a kapu line there. After the incident, the men were going back and I saw Ramaila walking outside from the kapu line.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Is that all you saw him do? What did you see Jose Sotelo doing inside the kapu line?

A. I saw him inside the line with Victor Degamo, running around.

Q. But you did not see him doing anything.

A. I saw him running.

Q. How about Daniel Casil, what did you see him do?

A. He was inside the group, he was running around. [66]

Q. What do you mean by running around?

A. Well, walking around and running both.

Q. Now you say that the incident was all over in about, somewhere around 4:35?

A. That's right.

Q. Up until after 4:35 approximately had you made any list of names of people down there? Before the incident happened? A. No.

Q. Did you recognize any people apart from the ones you just mentioned before that time?

A. No.

Q. After the incident was pau did you make a list of names of people that you recognized as being down there? A. I made a list.

Q. You used that list to refresh your memory to testify today? A. Yes.

Q. You put on that list only the names of people you personally know by name and sight?

A. That's right.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Have you added to that list in any way since?

A. No.

Q. You are positive you saw everyone whose name was on that list down there that day?

A. That's right.

Q. Are you positive you saw Pablo Pineda?

A. That's right.

Q. Are you positive you saw Andres Velasco?

A. That's right.

Q. But this is after the incident happened?

A. After.

Q. Are you positive you saw Itsuo Shimizu?

A. That's right. [67]

Q. Are you positive you saw Honorio Collado?

A. That's right.

Q. Are you positive you saw Riyoji Shimizu?

A. That's right.

Q. Are you positive you saw Yoshio Ginoza?

A. Right.

Q. But this list of yours from which you testified was made after the incident was over?

A. That's right.

Q. You could not have all these people under observation while the incident was going on? You did not know what they were doing?

A. I knew what some of the people there were doing.

Q. You could not identify them other than the five or so who crossed the kapu line? Apart from

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

the people who you already said you saw inside the kapu line, you could not positively identify the others? You do not know what they were doing when the incident was going on?

A. That's right.

Q. You say you have been a police officer on Lanai for the last four years? Who was your supervisor on July 14th, your immediate superior?

Mr. Crockett: The question is indefinite.

Mrs. Bouslog: Your immediate superior on July 14th? A. I don't know.

Q. Who was in charge of the police station for Lanai on July 14th? A. Asst. Chief Freitas.

Q. Who was in charge on Lanai.

A. He is from Wailuku.

Q. Who was the ranking officer permanently stationed on Lanai as of July 14th?

A. Lt. Medeiros.

Q. Were you subject to his orders and direction at that time? [68] A. That's right.

Q. Is Lt. Medeiros still in charge of the station here? A. Not any more.

Q. When did he cease being supervisor, when did he leave? A. He left last week.

Q. Do you remember the date?

A. I don't know.

Q. Do you know a person by the name of Henry Aki? A. I know him.

Q. Did you see him down there on that day?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

A. I have seen him.

Q. Did you see him at the Harbor on July 14th?

A. I saw him down there.

Q. Do you know whether or not he was charged as a defendant in this case? A. I don't know.

Q. Did you ever have any conversation in the station here in regard to his being charged?

A. That's right.

Q. You did have a conversation with him about the fact he had been charged? Is that correct?

A. I don't know anything about his being charged.

Q. Did you have any conversation with him about his being at the Harbor and being made a defendant in this case? A. I did.

Q. Where did that conversation take place?

A. Down the Harbor.

Q. Did you ever talk with him in the Police Station? A. I did not.

Q. Will you tell about that conversation?

Mr. Crockett: I object. He is not a defendant. It is incompetent, immaterial and irrelevant. Can counsel show where it has any bearing? [69]

Mrs. Bouslog: I am testing the credibility of the witness.

Mr. Crockett: That's going pretty far. I do not see where it makes any difference when the man is not charged, it has no bearing in the case and we should try to save the time of the defendants here. But I will withdraw my objection.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: Will you state the conversation you had with Mr. Aki at the Harbor?

A. May I ask what date this was?

Q. Tell what you remember about the conversation. A. I just served him a warrant.

Q. I thought you stated you did not know whether he had been charged?

A. That I don't know.

Q. Well, this is the warrant—(shows it to Court). You knew a complaint had been filed against Henry Aki as a defendant? After you served the warrant did you ever talk to him about the fact he was charged?

A. Just served the warrant.

Q. Do you know whether or not the case against Mr. Aki was dropped?

Mr. Crockett: The record will show no charge was entered against Mr. Aki.

The Court: The record shows it was dismissed.

Q. Do you know why it was dismissed, even though he was present at the Harbor?

A. I have no idea.

Q. You know he was present and the complaint dismissed against him? Mr. Aki was not there operating a crane or assisting the company representatives in any way, was he?

A. I have no idea. [70]

Q. Do you know whether the charges were dropped against any of the other defendants on

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

whom you served complaints? A. I have no idea.

Q. Now, you have testified regarding the identification of certain individuals in the pictures in the exhibits that have been filed in the Court. Will you look at the Court Exhibit number 1 and state the time the picture was taken?

Mr. Crockett: I object. It is not necessary as it has already been testified to by other persons.

Mrs. Bouslog: I want the witness to state, as of his own knowledge whether it was after the incident.

Mr. Crockett: I withdraw the objection.

A. Picture No. 1. I have no idea when it was taken.

Q. So far as you know it could have been taken any other day than the 14th? The same day, or after the incident happened—in the morning or any time? A. Yes.

Q. Will you look at the picture and see if there is an incident——

Mr. Crockett: I object. He has said he does not know.

Q. I am asking him if he can, of his own knowledge, identify that as a riot scene. I will withdraw the question. The picture speaks for itself. It is not exactly a riot scene.

Court: We will take a short recess.

Court recessed at 2:45 p.m. Reconvened at 3:05 p.m.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Will you look at picture number 4. Will you state, from looking at the picture whether it shows a scene of so-called riot?

A. I have no idea.

Q. I ask the Court to instruct the witness to answer yes or no. [71]

Mr. Crockett: I object.

Mrs. Bouslog: Withdraw the objection. Your answer is you have no idea. Can you tell from looking at the picture when it was taken.

A. I have no idea.

Q. Will you look at picture number 14. Can you tell from looking at that picture whether it represents a scene from a so-called riot?

A. I have no idea.

Q. Can you tell from looking at the picture when it was taken? A. I have no idea.

Q. Will you look at picture number 15, would your answer be the same to both those questions that you have no idea when they were taken or what they represent? A. That's it.

Q. The same is true of pictures 20 and 24?

A. I have no idea on both of those pictures as to when it was taken or whether it is the scene of the incident.

Q. That's all.

Mr. Crockett: No further examination. Call Mr. Johnson.

Exhibit K—(Continued)

FRED SPENCER JOHNSON

being first duly sworn, testifies as follows:

Direct Examination

Mr. Crockett: What is your name?

A. Fred Spencer Johnson.

Q. Where do you reside?

A. Lanai City, Lanai.

Q. Mr. Johnson, the Court has provided an interpreter and it is desired that the questions be interpreted to the defendants. Please hesitate before you give me your answer and then the answer will be interpreted. What is your occupation? [72]

A. I am an assistant superintendent of the Hawaiian Pineapple Company.

Q. On July 14th of this year in the afternoon about three or after were you down at Kaumalapau Harbor? A. I was.

Q. What was the occasion of your being there?

A. We were attempting to load some bins of pineapple on the barge going to Honolulu.

Q. About what time did you arrive at the wharf there?

A. I would estimate about a quarter of four.

Q. You recall a barge coming in that afternoon about that time? A. Yes, I do.

Q. After the barge arrived and was tied up to the wharf, as the evidence shows it did, what did you do?

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

A. I attempted to hook the bins on the spreader attached to the crane to the pineapple bins so it could be swung on the barge.

Q. Whereabouts were you doing this work? What portion of the wharf?

A. I was on top of eleven bins which were stacked along the tables where the trucks are unloaded.

Q. Was anybody working there with you?

A. Yes.

Q. Who was that other person?

A. Two people, Harrington and Marquez, on the second tier of bins and Kluge was standing down on the table.

Q. What happened when you people started to hook these bins on the spreader?

A. A large number of men who were sitting around on the sea wall and on the rail on the Mana landing made a rush for the bins where we were working and climbed up on the bins.

Q. Tell us what happened. [73]

A. The first man who got on top of the bins tackled Mr. Harrington and knocked him down.

Q. Did you recognize who that man was?

A. Diego Barbosa.

Q. What happened after that?

A. Another man whom I do not know tried to push Mr. Marquez off the bins. I gave him a shove away from Mr. Marquez. Then I was pushed down

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

into the next layer of bins myself. Then from that bin I jumped off on to the first table, then back of a truck across on the opposite table, down on the wharf, across the barge and jumped on the tug.

Q. Then what happened after that?

A. As soon as I jumped down on the tug several men ran across to the barge and one of them threw a pineapple at me. Fortunately his aim was poor and he missed.

Q. This person who threw the pineapple at you, were you able to recognize him?

A. Yes.

Q. Who was he, what is his name?

A. I believe his name is Sotero Unciana, No. 8498.

Q. Could you pick him out in the Court room here?

A. This is the man here. (Points to defendant Unciano.)

Q. The man sitting down there in the green shirt?

A. Yes.

Q. Are you able at the present time to point out any other persons whom you saw down there during that time, Mr. Johnson?

A. Just what time do you mean, sir—from the time we were rushed at the bins, or when?

Q. At any time during the period of the rush, or immediately after the rush. [74]

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

A. I can point out quite a few people, but I am not familiar with their names.

Mrs. Bouslog: I am going to object. If the witness will describe the individual? The Court room is too crowded to permit all the defendants to get into the room.

Mr. Crockett: I just want him to point out that particular person and identify him in some way.

Mrs. Bouslog: I will stipulate we will have no objection to that if you will go out and get an equal number of people here so that there will be some chance of his misfiring on some of the defendants.

Mr. Crockett: I object. The witness has a perfect right to point out——

Mrs. Bouslog: Not without giving some kind of description.

Mr. Crockett. Give him a chance and he will. He will give us a description when he points out the man.

Mrs. Bouslog: I object.

The Court: Objection over-ruled.

Mrs. Bouslog: Your Honor, every objection I make is over-ruled. This is a constitutional right. (Further argument.) Please reconsider the ruling.

The Court: The witness is not asked to point out all——

Mrs. Bouslog: That makes no difference. I am shocked that Mr. Crockett would follow such a procedure. Your Honor must know the defendants

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

have a right not to incriminate themselves. (Argument.) There should be some test to check his observation. Just to say, "point out one that you saw" is not a good test for the witness.

The Court: The witness does not even know them by name.

Mr. Crockett: We will withdraw the question. It is all right. We do not want to hold up the proceedings. We [75] withdraw the question to save time. Cross examine.

Cross Examination

Mrs. Bouslog: Is it your job as an Assistant Superintendent, Mr. Johnson, to load pineapple bins?

A. In an emergency, yes.

Q. You consider a lockout an emergency?

A. Would you define a lockout?

Q. How long have you been an assistant superintendent for Hawaiian Pineapple Company?

A. Since April 1st.

Q. Of this year? A. Of 1947.

Q. How many bins would you say were there to be loaded on the barge?

A. I believe there was 11 in the pile and one on the truck.

Q. When were the pineapples in the bins picked, do you know?

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

A. One bin had been picked that day. I do not know exactly what date the other bins had been picked. There were several there that had been picked the last day before the work stoppage started and I believe three bins other than the ones which were picked that day had been picked during the work stoppage.

Q. Do you know the capacity of the barge, how many bins a pineapple barge will carry?

A. At the present time we are putting 153 bins on these barges.

Q. Are you an expert in the pineapple industry to the extent you can tell me as to how long it is of any value for purposes of canning?

A. Due to the by-products at the Cannery—such as citric acid—they are recoverable until the fruit is completely rotted. [76]

Q. My question was directed for canning. Strike the question. Ordinarily how quickly is pineapple shipped after it is picked?

A. Under ideal conditions we hope to have pineapples in cans within 48 hours but occasionally it will be left on Lanai five or six days.

Q. There were only 11 bins to be loaded on this barge that carries 153? What is your best recollection?

A. Twelve—11 on the pile and one on the truck.

Q. You say Mr. Harrington, Mr. Marquez and yourself were over on the bin, or on the—where were you standing at the time?

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

A. We were standing on the top layer of the bins.

Q. What time did you say the barge came in?

A. I did not say.

Q. What time do you recall?

A. Sometime shortly after four. I cannot give you an accurate time.

Q. Did you sustain any injuries? A. No.

Q. Would you describe your state of mind as "terrified"? A. I do not know.

Q. That's all.

Mr. Crockett: What was your state of mind when this was happening?

A. My first reaction was surprise, second reaction was getting out of the way of overwhelming odds.

Q. So that instead of being terrified you might have been apprehensive? A. Yes.

Mrs. Bouslog: What do you mean by apprehensive? [77] What's your idea of the difference between terror and apprehension? What does the witness mean after the Prosecution coaches him as to what he meant?

A. I experienced terror during the war quite a few times when there was no question in my mind that I would either be dead or——

Q. So that's what terror means to you?

A. Yes.

Q. And apprehension? Can you be apprehensive

Exhibit K—(Continued)

(Testimony of Fred Spencer Johnson.)

if it is going to rain and you don't want it to?

A. That's not my connotation of the word.

Q. Perhaps if you will substitute your own words instead of the Prosecution's?

A. Well, if you are standing in the middle of a road and a car is coming you are apprehensive of being hit and you get out of the way.

Q. But you would not say you were terrified or feared for your life?

A. No, I do not believe I would say that.

Mr. Crockett: Did you fear for your personal safety,—your limbs? A. Definitely.

Q. That's all.

JEROME FRANCIS HARRINGTON

being first duly sworn, testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name?

A. Jerome Francis Harrington.

Q. What is your occupation?

A. Research assistant. [78]

Q. Now Mr. Harrington, as I question you will you pause before you give me your answer so as to allow the interpreter to interpret my questions

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

to the defendants. She will also interpret your answer. A. Yes, sir.

Q. Mr. Harrington, were you the one that was at Kaumalapau wharf on the 14th day of August, 1947, assisting with the loading of the pineapples after the barge came in? A. I was.

Mrs. Bouslog: May I suggest the Prosecution testify?

Mr. Crockett: It is perfectly correct to tie up the witness without asking so many introductory questions.

Mrs. Bouslog: I withdraw the objection.

Q. Just where were you working there, Mr. Harrington?

A. I was on top of the bins attempting to hook on the chains.

Q. Do you know Mr. Johnson? A. I do.

Q. And you know Mr. Marquez? A. Yes.

Q. And Sonny Fernandez? A. Yes.

Q. Who was assisting you in the work that you were doing?

A. Johnson was directly opposite me and Charles Marquez was behind me.

Q. Now, as you were about to proceed with the work, what, if anything, happened?

A. As the spreader was swung over the bin we were just leaning down to hook the chains through the rings when this large group of men who were down along the sea wall started in rioting, yelling.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

They came running down towards [79] us and started to climb up on to the bins. As they were running down toward us one man was climbing up the bins directly in front of me. About this time someone tackled me from behind. Two or three men then came running around, swarmed around me, attempting to push or throw me over the side of the bins. I grabbed a couple of them as they were attempting to push me around. I was thrown down on the pineapple. As many as five or six of them apparently piled on top of me and I could not get up. They started in to beat me about the face and body with their fists and with pineapples. I covered up as best I could by putting my hands up over my head and pulling my knees up. Someone was attempting to hit me in the groin and I saw Gigo was trying to strike a blow. He had his arm raised and as it came up I warded it off with my leg. Then I pushed him away with my foot. He was down below my legs, down by my knees. I also saw Pablo hitting me about the body. This went on for some time and then it suddenly stopped. I heard Bilson say, "You can get up now, they have gone," or words to that effect. I then got up and saw Bilson on the opposite edge of the bin with his camera in his hand.

Q. Now you mentioned—you say you saw Gigo—do you know his name?

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

A. That's a nickname. I believe Diego Barbosa is his name.

Q. And Pablo?

A. I believe his name is Pablo Pineda.

Q. Can you point him out to me?

A. Here is the man. (Points out Pablo Pineda.)

Q. The man who just appeared in the door with the brown shirt? A. Yes. [80]

Q. Were you able to identify any other person during that incident?

A. I remember seeing a fellow called Sumagit.

Q. Can you point him out to us?

A. (Witness looks around and finds defendant Sumagit and points him out to the Court.)

Q. This fellow in the apricot colored shirt?

A. Yes.

Q. And at the time you say you were pushed down off your feet on the pineapples, about how many persons were there? I am not speaking of Johnson and Marquez, but how many of these persons were present at the time? I am referring to up on top of the bins.

A. I would say about ten to fifteen that were moving around, came up over and came on towards the barge.

Q. We have a series of pictures here which have been admitted in evidence as Prosecution's Exhibit "B". I will ask you to look at the first page here and to state whether or not any of the scenes shown

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

on this page represent anything in the incident which occurred to you. If possible, tell us the number of the picture.

A. Picture number 11 shows Gigo and Pablo underneath where I am.

Q. That's picture number 11? A. Yes.

Q. Showing you the second page, pictures 12-19. Do any of those show the scenes in which you are involved? A. No, I am not in those.

Q. Showing you a page from Prosecution's Exhibit "C" numbers 57-62. I will ask you whether or not any of [81] those pictures have any relation to the incident as related to you?

A. Picture number 57 shows the start of the riot where the men are just climbing or starting to climb up the bins, rather, and in picture number 58 I am in the right-hand corner of the bins there.

Mrs. Bouslog: Will you show me where you are in the picture?

A. I am not visible in the picture taken in the bins. A man is on top.

Mrs. Bouslog: Is there any in which you are visible? A. I don't believe there are.

Mr. Crockett: And also pictures from 63-67, are they about the same?

A. That is essentially the same thing—all during the period while I was up on top of the bins.

Q. At the time when this rush was made, or break was made, by these persons, was there any noise or yelling as they approached the bins?

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

A. Yes, they were yelling and waving their arms. When Gigo was beating me he was saying something in Filipino that sounded like "Allah."

Q. What was the reaction upon you mentally, when you heard these people making noise, when you saw them rushing toward the bins. What was your mental reaction?

A. I wasn't sure what they were about to do, at first. They came running down from after being so very quiet that I was startled. I don't recall any special mental reaction up to the point when someone hit me from behind and then there was confusion.

Q. Were you able to identify the person who hit you from behind?

A. No, I did not see who it was. [82]

Q. Cross-examine.

Cross-Examination

By Mrs. Bouslog:

Q. Is it your job as research assistant to fasten or to load pineapple bins?

A. It is my job as a salaried employee to do whatever job there is to be done.

Q. Who instructed you to load pineapples?

A. No one. No one instructed me.

Q. You were not ordered? A. No.

Q. Not told to go down?

A. No, I wasn't told.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Q. How did it happen you went down at that particular time? When did you first know there was going to be pineapples loaded or that a barge was arriving? A. I don't recall who told me.

Q. When did you first decide to go down to help load the pineapple barge?

A. I don't recall exactly.

Q. What time did you go down there?

A. Between approximately 3:30 and 4. I don't recall the exact time.

Q. Have you ever, on any other occasion, helped load the pineapple barge? A. No.

Q. First experience? A. Yes.

Q. Do you know whether or not barges are consistently loaded with only 11 or 12 bins?

A. Not customarily, only under unusual circumstances. [83]

Q. Would you describe what you saw the person you identified as Sumagit doing on that occasion?

A. He is standing on top of the bins.

Q. He was close to you? A. Not too close.

Q. He did not strike or touch you?

A. Not that I know of.

Q. What time did you leave the Harbor?

A. Approximately between 5:30 and 6.

Q. How many people were there when you left?

A. There were 20 or 30 pickets and 6 or 8 police officers.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Q. How many police officers were present at the time when you arrived?

A. There was Asst. Chief Freitas, Detective Seabury, another Maui police officer, a plain clothes man from Maui, Lt. Medeiros, Officer Takahama, Officer Oyama. It seems there were one or two more, I cannot recall exactly.

Q. What time did the barge tie up?

A. About 4:15 as nearly as I can remember.

Q. What was going on at the Harbor when you arrived?

A. All the men were sitting along the wall, talking, no activity.

Q. I mean at the Harbor. Was there any activity going on besides pickets sitting on the wall?

A. What do you mean by that?

Q. What else was happening?

A. Nothing else going on, nothing down there.

Q. And how many company employees were there when you arrived? [84] That is, non-strikers.

A. Eight to ten, I imagine.

Q. Can you name them?

A. Manuel Pavao, Sonny Fernandez, Johnson, Marquez, Kluge, Bilson, Buck Manriki. That's all I can think of at the moment.

Q. These people who were there when you got down there, what were they doing?

A. Standing around.

Q. Was the Mana in port at any time when you were there?

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

A. I believe the Mana was in port.

Q. You got down there at 3:30?

A. I do not know exactly,—approximately.

Q. You don't know if the Mana was there or what was happening in regard to the Mana?

A. I don't remember.

Q. Is six-day old pineapple good for canning?

A. This pineapple appeared like it would be all right for canning.

Q. What is the usual time in which it is canned after it is picked?

A. It varies on different occasions. Sometimes as long as three days, maybe longer.

Q. But you are a member of the Research Department. What's the most desirable time?

A. As quickly as possible.

Q. Would you say it is usual for the pineapple company to send a barge to Honolulu with only eleven bins on it?

A. I do not believe it is the normal practice.

Q. Have you ever known of any other occasion? Any other occasion on which a barge has come in and been sent out with as few as eleven bins? [85]

A. Not to my knowledge.

Q. You say you stayed there until around six o'clock. About how many pickets were there.

A. Approximately twenty.

Q. Were there still police officers there?

A. Yes.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Q. Barge there? A. Barge left.

Q. What time did the barge leave?

A. I don't recall the exact time.

Q. Before you left? A. Before.

Q. Were the police officers still there at the time the barge left? A. They were.

Q. Everything was peaceful?

A. Men were still milling around. No rioting.

Q. During all the time the so-called riot happened, you could not see anything that was going on? You were blinded? A. I did not say that.

Q. But you could not see anything except what was going on in the bin?

A. When *were* were wrestling around, before being thrown in the pineapples, I could see.

Q. What did you see? Were there still a group of people sitting on the wall?

A. I did not observe anyone still on the wall.

Q. You did not observe, but you could not say they were not? After everything had become peaceful and quiet did you notice if any more people arrived?

A. I do not recall observing anyone else arriving after the riot stopped. [86]

Q. Where were you after things had become peaceful, where were you standing?

A. The police told us to come off the barge and keep away as much as possible. Then we came back on the wharf and then the barge left.

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Q. Did you at any time during the course of the so-called riot hear any of the police officers read the riot act? A. No.

Q. Did you hear any of them giving orders to the crowd to disperse? A. No.

Q. Would you describe or say you were in a state of terror while these happenings were going on? A. What is your definition of terror?

Q. I asked whether you would describe your condition as terror, or would you describe your state of mind——

Mr. Crockett: The witness has asked counsel the meaning of terror. There are all kinds of definitions.

Mrs. Bouslog: Your Honor, I made the same argument before Judge Wirtz over on Maui and Mr. Crockett said the word “terror” is clear,—striking terror into the people.

(Argument between counsel.)

Mr. Crockett: I am speaking on behalf of the witness. He just wants a definition.

Mrs. Bouslog: Are you aware of the charge against these defendants, that for throwing a few pineapples and for the pleasure of punching you, they are charged with a felony, the felony of riot. (Defense counsel explains terror and quotes from statute.) Does that sound like your state of mind at the time this was going on? A. Yes.

Q. No further questions. [87]

Exhibit K—(Continued)

(Testimony of Jerome Francis Harrington.)

Mr. Crockett: Just one other question. When the persons were striking and beating you did you suffer injuries? A. Yes.

Q. Describe what injuries.

A. Bumps on my head. I thought I had a broken rib, but the X-ray revealed it was not broken. The doctor said the cartilage was torn. There were bruises on my body.

Q. That's all.

Mrs. Bouslog: Did you say you shoved and pushed at other people? A. I said I grabbed.

Q. You grabbed hold of two? Do you think you inflicted any injuries on them?

A. I grabbed them to keep from being thrown over the side.

Q. Yes, but you weren't thrown over the side?

A. No.

Q. Even later you were not thrown over the side. A. No, because they were on top of me.

Q. And you were on top of the pineapples?

A. Yes.

Q. That's all.

Mr. Crockett: That's all.

The Court: We will adjourn until 9:00 a.m. tomorrow. [88]

Saturday, August 30th, 1947.

Court convened at 9:08 a.m.

The Court: Are you ready to proceed?

Exhibit K—(Continued)

Mrs. Bouslog: We are ready to proceed for the defendants.

Mr. Crockett: I would like to have the Court call the defendants to make sure that they are all present as we have witnesses who are to identify them, and I think the Prosecution is entitled to see who these defendants are.

The Court: We will have a roll call.

Mrs. Bouslog: All the defendants were here at a roll call five minutes ago, I believe.

Mr. Crockett: I have not had a chance to see them.

(Court clerk calls defendants. All are present.)

Mr. Crockett: I understand defense counsel would like to have Mr. Takahama for recross-examination.

KIICHI TAKAHAMA

Recross-Examination

Mrs. Bouslog: Officer Takahama, will you state how many of the defendants in this case you identified yesterday?

Mr. Crockett: I object. Counsel stated she wanted further cross-examination, the same thing has been covered.

Mrs. Bouslog: Wait just a minute. I will count them and ask him.

Mr. Crockett: Okeh.

Mrs. Bouslog: According to my records you

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

identified 22 of the defendants in this case as having been present at the Harbor on the afternoon of July 14th, is that correct?

A. You mean the ones here right now? I have no idea of the number of defendants. [89]

Q. When you identified the people yesterday, you identified them in approximately the same order each time. I wonder if you will indicate by starting here, (points to front bench) each one of the people you recall being present on that occasion. Start in the front.

Mr. Crockett: This witness has been examined and it is not necessary. That is not proper cross-examination. When a person is recalled for recross-examination as a matter of courtesy if you have any further questions it is proper, but to go over the same thing over and over again, it is not proper recross-examination. I object and ask that Mr. Takahama be excused from the stand.

Mrs. Bouslog: Your Honor, yesterday I did not ask this officer to identify the people that he recalled having been present down there by starting at the beginning here and going down. It is proper examination and I fail to see why counsel is afraid to have these names called in that way. If he did it yesterday he can do it today. The reason I ask that he do it in this order is because yesterday he went down in approximately the same order, instead of going in the front. He apparently had in mind

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

a particular individual and searched through the crowd until he found that particular individual. He did not identify the individuals except in that order. What I want to find out is whether this witness can pick out 22 people from the crowd and I ask the Court to give a ruling on this.

Mr. Crockett: Counsel has said I am afraid. I am not. It is not a question of being afraid, I want to follow the ordinary and regular procedure. She has excused this witness. We are wasting the time of the Court and the defendants who want to get back to work. [90]

Mrs. Bouslog: The defendants will waive that business of getting back to work.

Mr. Crockett: It's the same question of going over and over this and delaying the Court's, defendants' and my time. If there is any other question you have not asked it would be all right, but I object to your going over the same ground, over and over again.

Mrs. Bouslog: This question was not asked the other day. He identified the witnesses in a particular order. I want to see if he can identify them in other than a particular order chosen by him. I believe the defendants have a right to ask that he identify the people as they appear in the Court room.

The Court: You object because he picked them out and then identified them?

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Mrs. Bouslog: I want to see if he can do it in an order which I prescribe. I want him to identify them as they are here in Court.

The Court: He identified them by sight and name, so I think we are going over it again.

Mrs. Bouslog: It's not the same thing. I think it is a proper question and ask the Court it be permitted to be answered.

The Court: You mean to have him identify the persons again?

Mrs. Bouslog: Yes, starting at the beginning, starting with the first bench and going right down the line.

The Court: That would be the same procedure as we had the other day.

Mrs. Bouslog: It is not the same thing. I submit it to the Court for a ruling.

The Court: Court will deny that.

Mrs. Bouslog: During the course of your testimony yesterday did you see any written memo of the names of the defendants? [91]

A. I have none in possession right now.

Q. Did you have any in possession yesterday?

Mr. Crockett: You are referring to the time when he was sitting here on the stand and testifying?

Mrs. Bouslog: Yes.

Mr. Takahama: I did not have any in possession.

Exhibit K—(Continued)

(Testimony of Kiichi Takahama.)

Q. Could you see the list Mr. Crockett had on the table? A. I did not see anything.

Q. When you were looking down when testifying you could not have seen any written memo?

A. Nothing of that sort.

Q. You are positive you did not see the list lying on the table?

A. I am positive. I could swear to that.

Q. That's all.

Mr. Crockett: Nothing further. Call Mr. Desha.

Mrs. Bouslog: I wonder if we could have a brief recess.

The Court: We will take a short recess.

(Court recessed at 9:25 a.m. Court reconvened at 9:34 a.m.)

ADOLPH HANEBERG DESHA

being first duly sworn, testified as follows:

. Direct Examination

By Mr. Crockett: What is your name?

A. Adolph Haneberg Desha.

Q. Where do you live? A. Lanai City.

Q. What is your occupation?

A. Assistant Personnel Director, Hawaiian Pineapple Company.

Q. How long have you been living here in Lanai City? A. Some thirteen months.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. Now in your work as assistant personnel director, what are your duties? What do you have to do in regard to carrying [92] out that job?

A. We are required, for one thing, to handle employment.

Q. By handling employment do you mean to engage employees? A. Yes.

Q. And when you do that what is the general procedure you go through, interviewing the prospective workers? A. Yes.

Q. What else do you have to do? We have an interpreter here to interpret the questions, so will you go a little slow so as to allow her to interpret the questions. Now, in addition to arranging for the engaging of new personnel what other duties do you perform in connection with your work?

A. Well, just about anything that comes up.

Q. That is, after a man is engaged do you come in contact with this individual in any way which would cause you to know him or become acquainted with him?

A. Yes, we do. One record we maintain in the Personnel Office is a list of employees for classification by labor grade.

Q. And in performing these duties have you become well acquainted with the persons employed here at Lanai City?

A. I believe quite familiar.

Q. That is, you know them by name as well as by face.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. Not all of them, but a great number of them.

Q. About how many employees do you have at Lanai City?

A. Between 1700 and 1800 people.

Q. Mr. Desha, I am going to show you a group of pictures. Referring to the first sheet of Prosecution's Exhibit "B", I believe it is, containing several individual pictures and ask you to examine that sheet and take the pictures one by one. That is, beginning with number 1 and see [93] if you can identify any person or persons in those pictures. Would you give us first the name of the person and his location in the picture?

Mrs. Bouslog: May I see the duplicate set? (Prosecution hands duplicate set of pictures to defense counsel.)

A. In this picture (No. 1), Hiroshi Oshiro, the third individual from the left in the rear row.

Q. Facing the camera? A. Yes.

Q. Do you see him in the Court room at the present time? Would you mind pointing him out to us?

(Witness walks over to Defendant Hiroshi Oshiro and identifies him by placing his hand on defendant's shoulder.)

Q. The man sitting along the sidewall, with the yellow shirt? A. Yes.

Q. How long have you known Oshiro?

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. As long as I have been here.

Q. What kind of work does he do?

A. He is a mechanic in the auto shop. His foreman is Fujigama.

Q. Any other persons in that first picture that you recognize, that is, picture number 1.

A. Not that I could be certain of. I cannot get a full view of their faces.

Q. Now, examine number 2, any there?

A. None there.

Q. Proceed to the next picture and see.

A. In photograph number 3. I recognize two individuals there, Hermano, he is the fourth from the left counting all of them, a three-quarter view of the right side of his face. (Points him out in the picture.) [94]

Q. Could you point him out here?

A. Sitting the third from this row in the brown shirt.

Q. What is his work?

A. Simon is a truck driver in the truck department, usually drives buses.

Q. How long have you known him?

A. Well, I got to know his name some time last August.

Q. You mentioned another you recognized in that picture.

A. He is the second individual from right to left, starting at the right of the photograph, going from

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

right to left, the second individual there in the picture. He has a striped jersey or polo shirt, with a cap on.

Q. What's his name? A. Unciano.

Q. Point him out.

A. I do not recognize him here at the present time.

Mrs. Bouslog: Maybe its because he does not have a striped shirt on.

Mr. Desha: Photograph number 4. The fourth individual from the left is "Blackie" Tomita.

Q. Just before we go to that one, you mentioned Unciano. Where is he employed?

A. He is in the harvesting department.

Q. How long have you known him?

A. I believe he is in Clarito's gang.

Q. Now you mentioned in picture number 4?

A. Tomita, fourth from the left with the polo shirt, twin stripes across the chest.

Q. He is present here?

A. Sitting in the fourth row back. (Points to defendant, who stands up.) That's Blackie Tomita.

Q. What kind of work does he do?

A. That I am not certain of. I think Blackie works in the land preparation department, I am not certain of that.

Q. Any other person in the fourth picture that you recognize? A. Oshiro.

Q. The same one you identified in picture number 4? A. Yes.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. We will pass that one. Proceed to the next picture.

A. Photograph number 11. Gigo Barbosa.

Q. Which one is that?

A. He is at the top of the photograph.

Q. Any other person in there?

A. Pablo Pineda. He is the man in front of Gigo.

Q. Can you pick out Pineda and see if he is in the Court room?

A. This is the man known to me as Pablo Pineda.

(Defendant rises and is touched on the shoulder by witness.)

Q. What is his work, so far as you recall?

A. Pablo is one of the field construction crew. He works with Harry Shimono, part of the engineering set-up on the plantation.

Q. How long have you known him?

A. I would say I first ran into the name some time last August.

Q. We will proceed to the next picture.

A. Photograph number 14, Andres Velasco. He is the man on the left of the photograph. Jack Sipe,——

Q. Has he any other name?

A. To my knowledge it is Narcisso.

Q. Now Velasco, where do you say he is?

A. Andres is the man on the left of the photo-

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

graph and Sipe is the man next to Velasco in the photograph.

Q. Will you see if you can find or point out to us Velasco here in the Court room? [96]

A. He is the gentleman back here with the crew cut, right alongside of the window, second man from the right.

Q. What is his work?

A. Andres is one of the loading men here on the plantation. I got to know him because he is a pretty good volleyball player.

Q. And the man you mentioned as Sipe. Can you point him out?

A. He is the second man on the second bench, in the green shirt.

Q. What is his job?

A. Jack is down at the Harbor.

Q. About how long have you known him?

A. I think I got to know Jack shortly after I arrived up here, last July or August.

Q. Will you proceed to the next picture?

A. Photograph number 19. Gigo Barbosa.

Q. We will pass that. Passing you the third sheet, will you examine these and do the same, Mr. Desha?

A. Photograph number 21. John Maile.

Q. John Maile, okeh, which one is he?

A. He is the second individual on the left, with the baseball cap.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. He is not in these proceedings. Pass to the next picture.

A. Photograph number 22, the fourth individual from the left facing the camera is Melicio Riutorio.

Q. Can you pick him out here in the Court room?

A. The man on the last bench, sixth from the right, with the dark glasses. (Points him out.)

Q. What does he do, so far as you recall?

A. Melicio is in the harvesting department, one of the loading men, one of the old-timers here, has been here a good number of years. [97] Some twenty years before I arrived, really an old-timer.

Q. How long have you known him? Since you came?

A. No, I would not say since I came, it was sometime around the end of the year.

Q. I see. Will you proceed to the next picture?

A. Photograph 34, fourth individual from the left with his hat on is Basiliso Arruiza. Sometimes I think his name is Bonifacio, first name, that is.

Q. Any other persons there?

A. Next to him is Andres Velasco again.

Q. The same one you recognized in some other picture? A. Yes.

Q. Arruiza is not in these proceedings, so we will proceed.

A. Photograph number 25, the second individual from the left,—the photograph shows a side

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

view of the right side of his face is Bartolome Agliam.

Q. Could you pick him out, please?

A. Sitting in the fourth row with the "palaka" shirt on, second man from the wall in the fourth row, with glasses.

Q. Showing you the next sheet, beginning with number 29.

A. In number 29 is an individual known to me as one of the police officers from Maui, Mr. Murayama.

Q. Okeh. He is not a defendant here, so we will pass him.

Mrs. Bouslog: Maybe he should be. He was present. That seems to be the test.

Q. Anyone else? A. No, sir.

Q. Showing you the next group of pictures, beginning with number 39. [98]

A. Photograph number 44, Arruiza.

Q. Which individual is that?

A. First on the left as I face the photograph.

Q. No one else in that?

A. No. Photograph number 46.

Mrs. Bouslog: What was number 44, not clear, Arruiza?

Mr. Crockett: He is not in these proceedings.

A. Photograph number 46, again I see Melicio Riutorio.

Q. Well, we won't repeat that. The next one?

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. Photograph number 47. The individual on the immediate left of the photograph, profile view, is Norberto Quinton.

Q. Can you pick out Norberto Quinton in this crowd?

A. This individual here, with his chin in his right hand, on the side here.

Q. How long have you known him?

A. I have known of his work in the carpenter shop. He is a very good man, one of the newcomers here and arrived sometime after January, 1946.

Q. He is an employee in the carpenter shop?

A. Yes.

Q. What would be the next picture recognized? Anyone else in number 47?

A. No. Photograph number 49, Basiliso Ar-ruiza.

Q. We will pass him. The next one? This is the last sheet and the end of the series, if the Court please.

A. Photograph number 52. The same person, Quinton.

Q. Proceed to the next one.

A. Immediately back of him on Norberto's right, as I face the photograph is a profile view of Simon Hermano.

Q. The same one you previously identified?

A. Yes. [99]

Q. Any other person in that photograph?

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. Photograph number 55, Gigo Barboza.

Q. Pass him. Now showing you the group of pictures which has been received in evidence as Prosecution's Exhibit "C", beginning with number 57. Will you examine those and see if you see anyone you recognize?

A. In number 58 I see Fred Johnson.

Q. This is the Mr. Johnson who is one of the assistant superintendents? A. Yes.

Q. Whereabouts is he?

A. He is on top of the pineapple bin. If you divided the photograph up into fourths he would fall on the extreme right of the photograph, standing up.

Q. Any other persons there that you recognize?

A. No, sir.

Q. Proceed to the others. A. No others.

Q. Showing you the second sheet of the series beginning with number 63.

A. Photograph number 67. Again I see Simon Hermano.

Q. He is the same one you previously mentioned? A. Yes.

Q. In number 66?

A. I recognize Officer Murayama with his back to the camera, and Mr. Bilson.

Q. Where is Mr. Bilson?

A. He is standing on the loading table with his back to the camera. I would say it would be the loading table at Kaumalapau terminal.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. How are you able to recognize him from the back?

A. He is probably about as skinny as I am. I know him quite well. When I first came here, I lived in the same building with him. [100] I see him a lot in the daily course of my work.

Q. Showing you the sheet marked Exhibit "E" beginning with picture number 68.

A. In number 68 is George Ramaila. He is the person on the extreme right of the photograph as I face it.

Q. Can you pick him out in the Court?

A. The first man sitting along the wall here on the right with the watch on his arm.

Q. Where does he work?

A. He is one of the truck drivers in the truck department.

Q. How long have you known him?

A. Shortly after I came up here in July. I used to know his brother very well.

Q. Any other persons? A. No, sir.

Q. Showing you the first page of the group marked Exhibit "D" beginning with picture number 71, will you examine those and see if you recognize any of those?

A. Approximately in the middle of photograph number 71 again I see Andres Velasco. He has on a white "T" shirt.

Q. The same person you previously identified and pointed out to the Court? A. Yes.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. Proceed to the next one.

A. Photograph number 73.

Q. How about number 72, anyone there?

A. I see Melicio Riutorio. He has on a dark polo shirt.

Q. He is the same one you previously identified and pointed out to the Court.

A. Yes. Photograph number 73, Gigo Barbosa.

Q. No one else in there?

A. Basoliso Arruiza. [101]

Q. Okeh. Both of those are not in these proceedings. How about the next one?

A. Photograph 75. The individual on the far right of the photograph as I face it is Domingo Basinga.

Q. Can you pick out Domingo Basinga?

A. He is the individual outside with the blue shirt on, on the porch, standing here against the railing.

Q. I will ask that the Court have the person step to the door.

Mrs. Bouslog: Will the person with the blue shirt on, standing next the railing come to the door?
(Defendant comes to door.)

Q. Is that the person you pointed out?

A. Yes.

Q. The man with the glasses on?

A. Yes.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. Any other persons in that picture that you can recognize?

A. Photograph number 76, the person—starting at the right of the photograph as I face it, with the white T-shirt, or polo shirt is Eustaquio. When I first knew him his name was Raas. His name has been changed since then to Hubin.

Q. Can you point him out to the Court?

A. On the second bench, first one next the window.

Q. With the greenish shirt? A. Yes.

Q. Anyone else you recognize?

A. Not that I could be certain of.

Q. Any other on that page?

A. Photograph number 77. About in the middle of the photograph is Asst. Chief Freitas. On the extreme left of the photograph in the lower left hand corner is Capt. Seabury of the Maui County police force.

Q. Anyone else? A. No, sir. [102]

Q. Anyone else on that page that you recognize?

A. No.

Q. Coming back to Hubin. How long have you known him?

A. I am not certain as to the exact time. I should say between nine and twelve months.

Q. What kind of work does he do?

A. Eustaquio is a supply truck driver in the spray section of the field maintenance department.

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

Q. Then the last picture, which is Exhibit "D", do you recognize anyone in that one?

A. No, sir, I do not.

Q. Cross-examine.

The Court: We will have a brief recess before cross-examination.

(Court recessed at 10:25 a.m. Reconvened at 10:40 a.m.)

Cross-Examination

The Court: Are you ready to proceed?

Mr. Crockett: We are ready to proceed.

Mrs. Bouslog: Mr. Desha, were you at the Harbor at the time the so-called riot took place?

A. No, mam.

Q. Your testimony here then has been based wholly upon the pictures which you saw?

Mr. Crockett: To which we object, if the Court please. Mr. Desha's testimony is based upon his knowledge of the witnesses gained as Personnel Director.

Mrs. Bouslog: I meant his identification of the men.

Mr. Crockett: That is his job.

Mrs. Bouslog: I mean identification of the defendants here.

Mr. Crockett: Just the form of the question.

Mrs. Bouslog: You identified the people in this

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

court room, you picked them out from pictures and then you identified them here, is that right? [103]

A. Yes.

Q. Calling your attention to picture number 1, —can you recognize where that scene was taken. Was it against the sea wall down at the Harbor?

A. I would not say it was against the sea wall, the individuals might be sitting on top of the wall.

Q. It is a peaceful group of people sitting on the sea wall?

A. It is a group of people sitting on the sea wall.

Q. It does not portray a riot scene?

A. No.

Q. Will you examine picture number 4?

A. Yes.

Q. Who was the individual you identified from that picture?

A. I see in that photograph Blackie Tomita.

Q. Does that picture portray a riot scene, and can you tell where the picture was taken?

A. It does not portray a riot scene. I recognize the guard rail at Kaumalapau terminal. That is on the mauka or land side.

Q. Do you know if the place shown there is inside or outside the kapu line?

A. To my knowledge it is outside.

Q. Calling your attention to picture number 14, can you tell where that picture was taken?

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

A. Immediately back of Andres Velasco, from my observation that is part of the sea wall.

Q. And that picture shows a somewhat peaceful scene?

A. Yes, it does—a group of men talking.

Q. Calling your attention to picture number 22. Can you recognize the location in which that picture was taken?

A. It appears to me that the section of the sea-wall at Kaumalapau appears on the extreme left hand side of this particular photograph number 22.

Q. And it portrays a peaceful scene?

A. It portrays a group of men walking to and fro.

Q. But at an area outside the so-called kapu line?

A. Judging from the height of what appears to be the sea wall I would say it was outside the kapu line.

Q. Now, calling your attention to picture number 24, can you identify the place where that picture was taken?

A. No, mam, I cannot identify the exact location where that was taken.

Q. Does it portray a peaceful scene?

A. It shows two men in the center of the photograph talking and walking. There is nothing there to make anyone think otherwise.

Q. Calling your attention to picture number 46,

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

can you identify the locale at which that picture was taken?

A. Photograph number 46, to my knowledge is taken in the proximity of the wharf area used for the docking of the Mana.

Q. That was not marked off inside the kapu line? A. No, mam.

Q. Does that portray a peaceful scene?

A. It shows a number of men standing. I would say it did show a peaceful scene.

Q. In number 47 whom did you identify there?

A. Melicio.

Q. In number 47 can you identify the place where that was taken?

A. It appears to be a section of the sea wall in the background on the immediate right.

Q. Does that describe or does the picture indicate a peaceful or riotous scene?

A. Well, I do not know.

Q. Well, from looking, from the evidence of the picture itself? [105]

A. I do not know what the raising of hands here is for.

Q. Well it does not look like they were going to strike anyone, does it?

Mr. Crockett: I object.

Mrs. Bouslog: Would you say it indicated a menacing attitude? A. No.

Q. Calling your attention to picture number 68,

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

can you identify the location at which that picture was taken?

A. No, mam, I cannot say the exact location, but I think I can say where it was taken if it was taken at Kaumalapau.

Q. Well, from the picture you cannot tell where it was taken? A. No.

Q. Would you say the man in the center tying his shoe looks like he is terrifying anyone?

Mr. Crockett: I object.

Mrs. Bouslog: Would you say it described a peaceful scene? A. Yes, mam.

Q. In the course of your work since July 14th have you had occasion to have any personal contacts with any of the defendants you have identified here this morning? A. I have.

Q. This is in connection with your work. Which ones have you interviewed or talked to since July 14th of the people you have identified?

A. I have talked to Hiroshi Oshiro, "Molokai." As I recall now, he is the only one.

Q. Have you had occasion to talk to or see Simon Hermano since July 14th?

A. Yes, I have seen him on numerous occasions.

Q. In connection with your work as Personnel Director?

A. I would say no, just to say hello and wave.

Q. A person identified by you as Unciano, have

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

you had any occasion to talk to him in the course of your work? A. No.

Q. To your recollection then, you have had no occasion in the course of your work to talk to individuals whom you have identified except for Hiroshi Oshiro?

A. No—and I would not say my talking to “Molokai” had to do with work.

Q. Calling your attention to picture number 76, who was the person in there you identified?

A. I recognize Eustaquio Hubin.

Q. Are you so positive from looking at that picture that you could not be mistaken under any circumstances?

A. I am certain in my own mind, that is all.

Q. Have you had occasion to examine and study other pictures of this defendant?

A. No, I don't believe I have seen any other except in the “Pine Parade” when he got married.

Q. Do you believe it is so clear and certain that you could be absolutely positive it could not be anyone except Hubin?

A. To my mind, I am certain.

Q. That's all.

Mr. Crockett: When you examined picture number 3, Unciano—may I ask again if you see him in the picture?

Mrs. Bouslog: Your Honor, this is re direct after cross examination. Mr. Crockett has no right

Exhibit K—(Continued)

(Testimony of Adolph Haneberg Desha.)

to go into this matter. Mr. Crockett cannot go back and fill in his case now and give the witness a chance to identify anyone else, that is [107] absolutely improper. He did not ask my permission to reopen direct examination.

Mr. Crockett: I ask permission to be allowed to ask the witness whether he is able to locate Unciano in the Court room, as at that time he could not find him in the Court room. People are moving around outside, coming and going. The Court is aware of the ruling that when the Prosecution puts on a witness we conduct a direct examination and there is a cross examination and we can have re direct examination which does not have to go into everything covered in cross examination. The witness has not been excused. The prosecution, after all, is not a superhuman being. We may overlook something at one time. It was a case of overlooking the man, who was searched for and not found, and I am simply asking whether the man has come into the Court room. I was not allowed to go out and look for him. It is proper, it is re direct examination and permissible.

Defense counsel rises to speak.

Mr. Crockett: I am going to keep on talking as long as you stand up. I will conclude if you will not interrupt me.

Defense counsel sits down. There is further argument by prosecution.

Exhibit K—(Continued)

(Testimony of Adolph Haheberg Desha.)

Mrs. Bouslog: May it please the Court, I asked specific permission to recall for cross examination and then was not permitted to go into it because it was something already gone into. Your Honor knows everyone was present, that is, we just called the roll. He was not able to identify him. Mr. Crockett closed without asking him to identify him and it is not proper now for him to locate the person. I suggest on the basis of proper procedure Mr. Crockett is not entitled to ask the question.

Mr. Crockett: Counsel is certainly in error when she says everyone was present because we called the roll. Mr. Desha had to walk outside the Court room. I don't know where he was. The Court is entitled to know whether or not he can be identified. He may have gone to the toilet. I have not insisted each one remain in the room.

The Court: The Court will permit the witness to be identified. What is his name?

Q. Unciano. Will you identify him?

A. The fourth man from the left, last row.

The Court: Point him out. (Witness does so.)

Mrs. Bouslog: He was sitting in the second row when he was not able to identify him before.

Mr. Crockett: That's all, no further questions. Mr. DeMello is here for cross examination on previous testimony. Call Mr. DeMello.

Exhibit K—(Continued)

LT. FRANCIS DEMELLO

Cross Examination

The Court: Mr. DeMello has already been sworn.

Mr. Crockett: You understand you are being recalled for purposes of cross examination?

A. Yes, sir.

Mrs. Bouslog: Mr. DeMello, you testified on direct examination you were present at the Harbor from approximately 3:30 on July 14th, is that right?

A. That's correct.

Q. Where is your regular station as a police officer?

A. I am regularly stationed at Wailuku, Maui.

Q. What is the nature of your assignment?

A. Officer of identification.

Q. What does that comprise?

A. I am in charge of the records bureau. [109]

A. Record and identification. In my line of work it is necessary for me to travel from one island to the other in the event there are disturbances of any nature.

Q. You were brought over here because you anticipated a disturbance?

A. No, I was brought over here when I received a call from Asst. Chief of Police Freitas, requesting that I come to Lanai and to bring my camera along with me.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. When did you receive that call?

A. I received it on Saturday, about 8:00 a.m.

Q. And what time were you told to be present, when did you actually arrive on Lanai?

A. I caught the regular plane that morning on Saturday.

Q. How many cameras did you bring?

A. I brought two.

Q. Were both of the cameras down at the Harbor that day? A. I just had one.

Q. And the camera has a telescopic sight?

A. Telescopic lens.

Q. That lens is removable, you can put it on and take it off? A. Yes.

Q. Did you receive any specific instructions from your superior about taking pictures before you went down to the Harbor? A. No not necessarily.

Q. Did you at any time during the day before you went down to the Harbor have any conversation or talk to Mr. Bilson or any representatives of the Company?

A. I talked to Mr. Bilson because I think he had some film. He had a couple rolls and I felt I did not have enough to——

Q. Enough for what? [110]

A. Enough to do any picture taking. I wanted to have a supply on hand in the event I needed them.

Q. When did you talk to Mr. Bilson?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. On Saturday when I came in.

Q. I am directing your attention to July 14th. Did you have any conversation with Mr. Bilson on that day before you went down to the Harbor?

A. Not that I remember.

Q. Did you have any conversation after you arrived at the Harbor at about 3:30?

A. I may have spoken to him, but just casually, not in reference to any police work.

Q. Now, where did you stand when you were taking the pictures which were introduced in evidence. Can you point out on the map the place you were standing when you were taking pictures?

A. (Witness points to place on map.) Looking this way.

Q. Do you recall where Bilson was standing?

A. No.

Q. Where Heminger was standing?

A. No.

Q. Put a cross there.

A. I was standing approximately inside, no, I was inside the kapu line.

Q. While you were taking the pictures that describe the so-called riot scene, and at all times when it was going on, you were standing approximately there?

A. No, I later moved over to the pineapple bins. I do not know the exact location of the pineapple bins. I was standing here—(points to map)—tak-

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

ing pictures this way looking at the pineapple bins.

Q. And all the pictures you took during the scene were facing toward the pineapple bin?

A. Excepting I did move a little to the left and then later on went over by the bins and took a shot up in the air towards the top of the pineapple bins.

Q. And you describe your position there—(points on map)—taking pictures all the time during the time the riot scenes were going on?

A. Yes. Later on, when I got through with that magazine the incident was over. Then the fellows began coming here. (Points to map).

Q. Your back was to the sea wall at all times, you never faced the camera towards the sea wall at any time during the time when the so-called riot was going on?

A. I took no pictures of what was going on there, no.

Q. You say you looked over there when this was going on?

A. Yes, I turned around and looked.

Q. When you turned around towards the sea wall did you notice any men sitting or standing there? A. Not in back of me.

Q. You say you were taking pictures here (points to map) and you say you remember looking behind you? A. That's right.

Q. Can you state whether you remember or no-

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

ticed any people sitting or standing along the sea wall?

A. I don't remember seeing anyone there. There may have been.

Q. You had your back to it at all times?

A. Yes.

Q. Maybe there were fifty or sixty people? [112]

A. I would not say fifty or sixty people. If there was a group that large I am sure I would have noticed——

Q. The question was whether you did notice any people along the sea wall and you said you were facing in the opposite direction and then you said you would have noticed if there had been a large crowd.

Mr. Crockett: Well, let him finish what he has to say.

Mrs. Bouslog: I did not ask his opinion. What time did you say it was when the so-called disturbance was over?

A. I did not say, you mean the riot incident, that's what you are talking about?

Q. Yes, approximately what time was it over completely—pau. Strike completely. What time was it when the alleged riot was pau?

A. About 4:45 I would say.

Q. Did you notice any people coming down to the Harbor after 4:45? Either walking or coming in cars?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

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Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

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Q. Did you notice any people coming down to the Harbor after 4:45? Either walking or coming in cars?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. I do not remember. They were all milling around there.

Q. My question is not what the people who were there were doing, but whether you noticed any persons coming down in cars, or on foot, or from the road up above the Harbor?

A. I am trying to answer your question. Right after the riot the people started to walk to the sea wall on the above road mauka toward where the monkeys are and they started walking all around, you could not say whether or not they had just come in cars, or got off some car.

Q. In other words, you could not positively say nobody arrived after the incident was pau?

A. That's right.

Q. You did not happen to notice any? It is possible that they could have? A. That's right.

Q. It's been quite some time since your direct examination and I have just now been given the transcript. Do you recall whom you identified of the defendants as being present on your direct examination?

A. Just two men, Diego Barbosa and Pablo Pineda.

Q. And as I recall the rest of your testimony was directed to the taking of pictures?

A. Yes.

Q. Now, you were asked by Asst. Chief Freitas to come over to Lanai and you arrived on Saturday.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

On Monday, the 14th you went down to the Harbor about 3:30, with a group of other police officers.

A. With Freitas, Medeiros, Takahama, no — Seabury.

Q. Your ordinary assignment is never a police officer in the sense of keeping the peace, your job is to identify people?

A. No, not necessarily. I am a police officer in the event I have to make an arrest. I perform those duties just as well as any other officer.

Q. But ordinarily you would not be summoned from Maui for the purpose of handling police matters, but for identification? A. That's right.

Q. And while you were down at the Harbor you were acting in your capacity of taking pictures and not actually serving to keep peace. Did you interrupt your picture taking at any time to restore order?

A. Yes, after I got through taking one magazine in the camera I immediately started with the other officers, started yelling to those people to go back.

Q. But you took pictures first and then did that?

A. Yes.

Q. Did you take any pictures at the time before the so-called riot incident started? [114]

A. Yes, I had taken a picture of the barge coming in.

Q. The barge was arriving just about the time you got there?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. No, after, about 4:15-4:20, about that.

Q. And you would say 4:15-4:20 and you have already testified that the alleged riot was pau about 4:45, did you take any pictures after 4:45?

A. I did, I took two magazines, two rolls.

Q. In other words, during the alleged incident you merely finished out one magazine in your camera which began with the docking of the barge, is that right?

A. I did take some pictures in the early part of the morning when they had the picket line.

Q. You did take pictures in the morning?

A. Yes.

Q. Did you finish up that roll at any time and remove it from your camera? A. Yes.

Q. When you went down there at 3:30, when did you begin taking pictures, when the barge was coming in? A. That's correct.

Q. You did not take any pictures before the barge was coming in? The first pictures shown on the roll would be the pictures of the barge, of the things that happened that afternoon?

A. Yes, when I went back to the dock when the barge came in.

Q. You continued to take pictures from the time the barge came in until the particular roll was taken, was through? A. Yes.

Q. Now those pictures—you did not reload your camera until after the thing was over?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. Yes. [115]

Q. So that the pictures actually taken at the Harbor at the time preceding and immediately following the alleged riot would just be on that one. I am trying to get you to identify the film which was taken during the time the alleged riot happened. Would it be correct to say that the pictures continued from the time the barge came in to the end of the film? A. Yes.

Q. Those would be the only pictures that directly show any of the activity that went on during the alleged incident?

Mr. Crockett: You mean pictures taken by this witness?

Mrs. Bouslog: Yes, pictures that you took.

A. Yes.

Q. Do you recall what numbers belong to the pictures?

Mr. Crockett: That would be 1 to 55 I am sure. "A" is the film and "B" the stills taken from that. I would like to request the Court to have a police officer bring in Exhibit "A."

The Court: Call Sgt. Takahama. Please bring us Exhibit "A."

Mr. Crockett: 1-56 is correct.

Mrs. Bouslog: And these pictures numbered 1 to 56 which were admitted in evidence you testified were all of that roll of film you took during that time? May I see them?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Mr. Crockett: Would counsel make that question more definite. Do you mean the actual riot or the riot pictures on the film?

Mrs. Bouslog: The only part introduced in evidence was the part taken during the actual alleged riot.

Mr. Crockett: During and immediately after.

Mr. DeMello: Some of the film taken in the morning are shots taken of Casimero Millare in the field. [116]

Q. What time did your film run out?

A. About 4:30.

Q. You kept on taking pictures after the incident was pau on the same roll?

A. No, mam, the last scenes I remember taking on that roll was of Pablo Pineda and Diego Barbosa up on the bin. If you will pull the film out as far as the white piece——

Q. The thing I am puzzled about these pictures is the sea wall. (DeMello fixes film, Counsel and witness examine film.) I am trying to have you identify the exact point on the film where it shows or reflects the scenes which is charged as the riot. Those are again the sea wall around that. There are three splices here, is that correct? All this film was introduced as Exhibit "A"? A. Yes.

Q. Will you identify the point at which the actual pictures of the riot ceased and those which were taken against the sea wall?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

(Witness identifies the film by unrolling it off by hand.)

Q. Now I want you to identify the place on that film at which you ceased taking the pictures of the so-called riot and finished out the magazine?

(Witness identifies place on the film.)

Q. You mean the scene of the pineapple bin? You say you were taking pictures looking towards the pineapple bins while the riot was going on. I notice pictures of the sea wall. Where did you stop on the riot scene and start on the sea wall? You did not stop taking pictures until the film ran out?

A. Yes.

Q. You did not attempt to restore order until you finished your films?

A. That's correct. (Shows films to defense counsel.) That's up on the pineapple bin.

Q. This is after everything is over and the people returning? A. Yes.

Q. So that everything after that point would be after everything was over?

A. Everything over on top of the pineapple bin, yes.

Q. There was no violence when they turned around and started to go back to the sea wall?

A. They were not orderly.

Q. When they left the kapu area they were all right? A. Yes.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

(Defense counsel studies film, with Lt. DeMello unwinding film by hand and Mr. Crockett holding it.)

Q. So that part of the film there represents the pictures you took from the time the barge came in until the riot incident was pau and the people started back towards the sea wall? A. Right.

Q. So that the remaining film on this roll was taken looking towards the sea wall and was taken after the incident was over?

A. It was taken immediately after they started to go back from the pineapple bin.

Q. The alleged incident happened inside the kapu line? A. Yes.

Q. There are two splices on this film?

A. Yes.

Q. You have identified this one, do you recall what time the films on the second splice were taken?

A. They were taken about five to five.

Q. In other words, about ten minutes afterwards? Can you estimate how many feet of film would be between that and the end of the film? [118]

A. I am not sure.

Q. The second splice was taken ten minutes after the incident and how about the third?

A. Right after I got through with the second.

Q. How long did it take you to do that? According to your time schedule, about five to five you started taking the second roll? A. Yes.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. How long did it take you to run out the second splice there?

A. Well, it takes time to load the camera. About three to five minutes.

Q. It took 3 to 5 minutes to take the second splice of film? A. Yes.

Q. So that it would be almost 5 o'clock when the third splice would be taken—after five o'clock?

A. Just about five o'clock.

Q. Were you finished taking pictures about five?

A. No, I took the third splice after I got through taking the second.

Q. What's on the third?

A. It was of the men sitting on the wall alongside the wall. I remember there were some shots of the pineapples, some of the bin.

Q. Were you the only police officer who was summoned to take pictures during the pineapple lockout?

Mr. Crockett: To which we object. We do not know what you mean by pineapple lockout.

Q. You came over on Saturday? Was there any other police officer during the time you were here who was taking pictures? Operating a camera to show what was going on? A. No. [119]

Q. Did you take other pictures from the time you came on Saturday besides the ones you took at the wharf? A. That's right.

Q. You have a record of film of other days?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. That's right. We had a riot squad from Hilo.

Q. Were they here when you were here? Were they here when you arrived on Saturday?

A. They weren't here.

Q. When did they arrive?

A. If I remember, it was on a Tuesday or Wednesday.

Q. In other words they were not here on Monday? Do you know when they were instructed to come?

Mr. Crockett: To which we object, the question is incompetent, irrelevant and immaterial.

Q. Do you know, of your own knowledge, when they were asked to come? A. No.

Q. To the best of your knowledge, they arrived on Tuesday?

A. I do not know if it was Tuesday or Wednesday.

Q. How long did you stay over here?

A. I was here about a week.

Q. From Saturday to Saturday?

A. I don't know if it was Saturday to Friday or Saturday to Saturday. But I was here just about a week.

Q. Now, let's see. Will you take a look at the picture number 1. Can you identify that picture as being either the second or third splice?

A. That's correct, either in the second or third.

Q. Which was taken after the people all had re-

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

turned? The second splice completed after peace had been restored?

Mr. Crockett: To which we object. [120]

Q. You just got through testifying that after you finished the first splice then the other one was taken about ten minutes after everyone was back?

A. Right.

Q. So that that picture was taken at least ten minutes after the incident occurred? Can you tell from your memory whether that is on the second or third splice?

A. I would not be able to say just exactly which.

Q. But in any event, it is at least ten minutes after?

A. Yes.

Q. How about picture number 2?

A. I think that's from the second or third.

Q. Picture number 3 would be in which group?

A. I think that picture would be in number 1.

Q. Before the men started back to the wall?

A. That's right.

Q. Picture number 4?

A. I think that's from the second or third.

Q. Picture number 5?

A. I believe that's from the first.

Q. Picture number 6?

A. I have no "6"—I think it has been taken out.

Q. Number 7? Number 7 would be on the first?

A. Number 7 would be on the second or third.

Then I have 9 and 11.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. They were on the first?

A. That's right.

Q. The next picture shown is number 12. Can you tell from number 12 which roll it is on?

A. I would not be able to tell on number 12.

Q. On picture number 13?

A. I believe that's on the second or third. [121]

Q. And number 14?

A. I think that's from the second or third reel.

Q. And number 15? A. Same.

Q. And number 16? A. Same.

Q. And number 17? A. Same.

Q. And number 18?

A. Same. Number 19, I think it is off the first.

Q. And number 20?

A. I think it is off the second or third.

Q. And number 21?

A. I think it is off the second or third.

Q. And number 22?

A. I think it is off the second or third.

Q. And number 23?

A. I think it is off the second or third.

Q. And number 24?

A. I believe it is from the second or third.

Q. And number 25?

A. I think it is off the second or third.

Q. And number 26? A. Same.

Q. And number 27? A. Same.

Q. And number 28?

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

A. I do not have number 28.

Q. Number 29?

A. I think that's off the first.

Q. Number 30? [122]

A. I do not have 30. I have 31.

Q. All right, 31.

A. I think that's off the first.

Q. And number 32?

A. The second or third.

Q. 33? A. Off the first.

Q. 34? A. Off the first.

Q. 35, 36, 38?

A. I believe they are off the first reel.

Q. What's the next number?

A. 39. I believe that's off the first, but I am not sure.

Q. 40?

A. 44 and 45. I am not sure.

Q. Well, judging from the scenes themselves it would seem to be after the alleged riot?

A. That was after the incident on the pineapple bin.

Q. As a matter of fact all numbers 44, 45, 46, 47, 48, 49, 50 are after the incident on top of the bin.

Q. Is number 49 on the second roll?

A. First.

Q. Number 50? A. I don't know.

Q. Number 52?

A. I am unable to say whether it is in the first, second or third roll.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. Number 53, 54, 55?

A. On the first roll.

Q. Do you recall—did you observe where Mr. Bilson was standing when he was taking pictures?

A. No, mam. [123]

Q. He was not standing where you were, duplicating the pictures you were taking?

A. I don't know.

Q. Do you recall Mr. Heminger? A. No.

Q. Did you at any time talk to Mr. Heminger or Mr. Bilson before the pictures you took in the first roll were taken, talk to Mr. Bilson or Mr. Heminger? Did you talk to them first?

A. I don't remember.

Q. Did you talk to them at any time about taking pictures—any time?

A. About them taking pictures? No.

Q. What is your estimate of the number of people who crossed the kapu line during the so-called incident?

A. I think about 120, more or less.

Q. How many people would you estimate were down there or who came down before the incident happened? A. About 125 to 150.

Q. And you think that about 120 of them were inside the kapu line? A. More or less.

Q. I want your best estimate. From your recollection, what's your best estimate?

A. About 120.

Exhibit K—(Continued)

(Testimony of Lt. Francis DeMello.)

Q. I think that is all the questions.

Mr. Crockett: I have no further questions.

The Court: We will adjourn until 1:30 p.m.

(Court adjourned at 12:15 and reconvened at 1:30 p.m.) [124]

The Court: Are you ready to proceed?

Mrs. Bouslog: We are ready to proceed.

Mr. Crockett: At this time the Prosecution rests.

Mrs. Bouslog: Your Honor, I move that the defendants be released from custody and an order rendered showing that the Prosecution has wholly failed to show proper cause why the defendants should be held. You will recall the words of the statute which requires that the District Magistrate, when persons are brought before him on a felony charge on a complaint of any person, that he should proceed to determine whether or not there is proper cause that a jury will convict the defendants if they are indicted by a Grand Jury. The defense is not going to offer witnesses or testimony as this does not constitute the offense of riot. The evidence is wholly insufficient. The defendants were charged under Chapter 277, R.L.H. '45. This statute has been on the books of the Territory since 1822. In that period of time there has never been a case where defendants have been charged under the statute where the statute has been so construed by the Supreme Court. It goes back to a law of the King

Exhibit K—(Continued)

in 1822, when seamen and ships used to come into the Harbor, and, much liquored up, went loose on the town with arms and force and rioted three or four days at a time, striking terror into the people. That is the basis of the statute. Prosecution is bound to show an offense which comes within the charge that is sufficient, that is a felony, carrying a 20-year penalty. Does your Honor believe that a jury composed of twelve members of the County of Maui would convict these 48 defendants of a felony for which they would be imprisoned for twenty years? It is preposterous that the Prosecution would ask for such a thing. (Further argument by defense counsel.) [125]

Mr. Crockett: Prosecution asks that a nolle prosequi be entered as to defendants Mariano Beldua, Valeriano Bugtong, Lorenzo Del Rosario, George Koohalahala, Shigeto Minami, Tiborcias Nesperas, Daniel Narceda, Herald Pacada, Elpidio Siruet, Francito Tocason, Pedro Unido and Pablo Vea. We ask that these defendants be discharged, if the Court please.

The Court: Nolle prosequi entered as to those defendants.

(Argument by respective Counsel.)

The Court: The court will not decide immediately in this case but will first look over the transcript of minutes before a decision is made.

Mr. Crockett: Will you notify us when Court will convene again?

Exhibit K—(Continued)

Mrs. Bouslog: I believe that it is not in keeping with the statute for you to hold the decision up, it is in violation of their rights. You are required to release or hold the defendants. The Court did not take notes in this case. They can't be held in violation of their rights for several weeks while you go and read the evidence already heard. They have a right to be released since no proper cause has been shown against them. It seems to me it would be proper to determine it right now.

Mr. Crockett: Counsel in her argument to the Court commented that the Court did not take notes. Court now wishes to have time to review and go over the testimony. The Court has a perfect right to do so. There is nothing in the statute which says it must execute "trigger justice." The Court is entitled to have time to consider this matter, and a statement of that kind is in contempt of court.

Mrs. Bouslog: They should be bound over or released. If [126] you would place a time limit, a reasonable period, that's one thing, otherwise they are being held.

The Court: My clerk will notify me when she has finished the transcript. A decision may be made in writing. Court will adjourn.

(Court convened at 2:45 p.m.)

/s/ ESTHER SHEHTAVIAN,
Court Stenographer.

Minutes Approved:

/s/ YOUNG WA,
Acting District Magistrate.

Exhibit K—(Continued)

District Court of Lanai, County of Maui,
Territory of Hawaii

Case No. 101—Riot

THE TERRITORY OF HAWAII,

Plaintiff,

vs.

BARTOLOME AGLIAM, et al.,

Defendants.

DECISION

The defendants herein named, Bartolome Agliam, Guilherme Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Suterio Unciano, Andres Velasco, Daniel Kaopuiki, having been arrested upon a charge of riot and unlawful assembly, and appeared before me as Acting District Magistrate of Lanai District,

Exhibit K—(Continued)

in the County of Maui, Territory of Hawaii, upon a preliminary hearing and it appearing from the evidence presented upon proceedings that there is proper cause to believe that upon an indictment by a Grand Jury and upon a trial thereon, a conviction would take place before a trial jury, it is ordered that the said defendants be and they are committed to the Chief of Police of the County of Maui, or his authorized subordinate, to be held to await the action of the Grand Jury of the Second Circuit upon said charge.

Dated this 16th day of September, 1947.

/s/ YOUNG WA,
Acting District Magistrate, Lanai District Court,
County of Maui, T. H.

[Endorsed]: Filed Jan. 14, 1948.

[Title of District Court and Cause.]

DEFENDANTS' EXHIBIT L
SUPPLEMENTING MOTIONS FILED
JANUARY 14, 1948

In the Circuit Court of the Second Circuit,
Territory of Hawaii

In the matter of the persons drawn to serve and
act as Grand Jurors in the Circuit Court of the

Second Judicial Circuit, Territory of Hawaii, during the A.D. 1948 Term, before the Honorable Cable A. Wirtz, Judge

I, the undersigned, Judge of the Circuit Court of the Second Judicial Circuit, do hereby certify that on Monday, the 29th day of December, A.D., 1947, and in public, to-wit: the Court Room of said Circuit Court, in the Court House, at Wailuku, Maui, Territory of Hawaii, D. W. Tallant, Deputy Clerk of said Circuit Court, at my direction and in my presence, after first shaking the Jury Box containing the names deposited therein (being the box wherein the names of persons, heretofore selected by the Jury Commissioners of said Circuit Court to serve and act as Grand Jurors in the Circuit Court of the Second Judicial Circuit, of the Territory, for the year A.D., 1948, were duly deposited), so as to thoroughly mix the pieces of paper upon which such names were and are written, did draw therefrom, by lot, the names of Twenty-three (23) persons to serve and act as Grand Jurors at the January, A.D., 1948, Term of said Court, to be and appear before the said Circuit Court of the Second Judicial Circuit of the said Territory, onday, theday ofA.D., 19 . . , ato'clock in thenoon of said day:

That the names of the persons so drawn to serve and act as Grand Jurors, as aforesaid, are as follows:

1. Thomas Cummings
2. George K. Kenolio

3. John Kalia Kapaku
4. Toshio Ansai
5. C. J. Cleghorn
6. Richard Masaji Yamane
7. John K. Anakalea
8. Henry Rudolph Meyer
9. Paul K. Higa
10. Isami Imamoto
11. John F. Souza
12. Shigeo Maeda
13. Alfred Alu
14. George P. Cooke, Jr.
15. Samuel K. Bush, Sr.
16. Cecil M. Dickson
17. Henry B. Ibara
18. Philip P. Gamponia
19. Eddie Wong Ain
20. Archibald F. Hardey
21. Louis Eaton
22. Robert S. Jo
23. Charles W. Brooks

I do further certify that the foregoing is a true and correct list of the persons so drawn as aforesaid, by said Clerk, in my presence, to serve and act as Grand Jurors in the Circuit Court and during the Term aforesaid, and that said drawing was

open and in public; notice of said drawing having been duly advertised in the "Maui News," a newspaper printed and published in Wailuku, Maui, in its issues of December 20th and December 27th, 1947.

Witness, my hand and the Seal of the Circuit Court of the Second Judicial Circuit, at Wailuku, County of Maui, Territory of Hawaii, this 29th day of December, 1947.

[Seal] /s/ CABLE A. WIRTZ,
Judge of the Circuit Court of the Second Judicial
Circuit, Territory of Hawaii.

Attest:

/s/ D. W. TALLANT,
Deputy Clerk.

I do hereby certify that the foregoing is a full, true and correct copy of this original, on file in the office of the clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H. Jan. 15th, A.D. 1948.

/s/ LYONS K. NAME, JR.,
Court Clerk, Circuit Court, Second Circuit, Terri-
tory of Hawaii.

[Endorsed]: Filed Jan. 17, 1948.

[Title of District Court and Cause.]

BILL OF PARTICULARS

Now come the plaintiffs above named and pursuant to the motion of defendants, file this Bill of Particulars.

In support of paragraph XVI of the complaint in which Judge Cristy is charged with having prejudged or predetermined the motions or challenges to the Grand Jury of the Second Circuit, Territory of Hawaii, plaintiffs state as follows:

That it appears from the transcript of the evidence, filed herewith, (Transcript of evidence filed with this Bill of Particulars set out on pages 567 to 1082) a copy of which is the possession of defendants, that Judge Cristy, from the outset of the hearing, viewed with disfavor the commencement of the challenge in the Second Circuit Court to the time-honored method of selecting grand jurors in the Territory of Hawaii, and personally resented a mainland lawyer appearing to present the challenge; that the said Judge Cristy indicated from the commencement of the hearing that he considered the challenge a personal attack upon the integrity and good faith of the Jury Commissioners of Maui County, one of whom is the duly acting Judge of the said Second Circuit, and that said predetermined attitude so biased and prejudiced said Judge Cristy that his rulings and comments as hereinafter set forth prevented plaintiffs from receiving a fair and impartial trial; that because of said bias

and prejudice Judge Cristy failed to recognize or consider that the plaintiffs' motive in filing said challenge was for the purpose of having the said Jury Commissioners follow and adhere to rulings of the Supreme Court regarding the method of selection of grand jurors to protect the constitutional rights of plaintiffs.

I.

That the following rulings and comments of said Judge Cristy are illustrative of the bias and prejudice manifested by Judge Cristy during the hearing on the challenge:

1. The Court ruled that no evidence as to the business connections of the grand jurors or the relationship of their business or business associations to the economic structure of the Islands was material without a preliminary showing that the action of the Jury Commissioners was reprehensible, although whether or not the action of the Jury Commissioners was reprehensible is immaterial. (Tr. p. 16.)

2. The court ruled that the fact that a person was an employer did not entitle plaintiffs to examine the members of the grand jury to ascertain from each grand juror whether, because of his employer status in the pineapple or related industry, he was in fact biased or prejudiced against workers, and particularly plaintiffs whose alleged offense grows out of a labor dispute with the pineapple industry. (Tr. p. 82.)

3. The court accused plaintiffs of impinging "a non-existent class hatred by employers against laborers," although the question of class hatred was and is immaterial and no such conclusion could be reasonably drawn from the affidavit. (Tr. p. 86.)

4. When counsel for plaintiffs pointed out that the questionnaire sent to prospective grand jurors asked for information regarding race and occupation, Judge Cristy informed plaintiffs' counsel that counsel came into the Territory of Hawaii from a different environment, thereby indicating Judge Cristy's conclusion that different rules of law should apply to selecting grand jurors in the Territory. (Tr. pp. 231-235.)

5. The court concluded and ruled that the legal attack upon the method of selecting the grand jury constituted a personal accusation against the grand jury and the court although there was no basis for the conclusion and ruling and the issue was immaterial. (Tr. p. 232.)

6. The court in reference to testimony on behalf of plaintiffs that the standard of living of proprietors and their views on social and economic questions frequently will be quite different from those of their employees, stated: "Does it say anything in there, Mr. Oshima, (the witness) as to whether a manager would be unable to take the same point of view as a laborer as to whether he got a punch on the jaw"? (Tr. p. 277.)

This statement manifests the court's bias and prejudice and his scorn and ridicule of the plaintiffs' challenge.

7. The entire statement made by the court to the Grand Jurors before plaintiffs were permitted to ask any questions usurps the function of plaintiffs' counsel and demonstrates that the court at all times considered the challenge of plaintiffs as a personal attack upon the integrity of the defendants, and shows that the sole object of the court was to safeguard the good reputation of the defendants. (Tr. pp. 409-419.)

8. Judge Cristy ruled that plaintiffs were not entitled to prove or to offer to prove the jury commissioners selected and composed the 1947 grand jury and the grand juries for the five proceeding years of such a large number of Caucasians and of employer representatives, and such a small number of non-Caucasians and representatives of the working class in relation to the population of Maui County and persons qualified for jury service under the statute that the grand jury selected, if selected at random (to obtain a cross-section) from those qualified to serve would have occurred no more than once in ten million times. (Tr. pp. 89, 95, 104, 114.)

II.

That Judge Cristy in his decision manifested his bias and prejudice against plaintiffs by ignoring the following uncontradicted evidence establishing an illegal and unconstitutional method of selecting

and composing grand juries by the defendant Commissioners in order to exonerate said defendants against what he construed and held to be an unwarranted attack on the good faith and integrity of the defendants:

1. That the Jury Commissioners selected seventy-six (76%) per cent of the jury list or thirty-eight (38) persons who are members of the Caucasian and Caucasian-Hawaiian races (as shown by Tables I-II, Movants' Exhibits 5-6, Tr. pp. 67-92, copies of which Exhibits are attached hereto), which racial group represents only approximately twenty-five (25%) per cent of the population of Maui County, as well as of the estimated persons meeting the standards provided by statute for jury service; that plaintiffs showed that, with one exception, they are all members of the non-Caucasian races which represent approximately seventy-five (75%) per cent of the population of Maui County, as well as of the estimated persons meeting the standards for jury service provided by statute.

2. That one of the Jury Commissioners who served as jury commissioner from 1934-1947 except for the year 1945 (Tr. p. 262) testified that he picked "haoles" (Caucasians exclusive of Portuguese) because "I want to give them something to do—if they want a chance to run the country;" that "they do run the country;" that "the majority—lots of these—the Baldwins—they own the place;" "and if they want to run politics, just as well give them something to do in courts." (Tr. p. 290.)

3. That one of the jury commissioners who has served since 1934, except for the year 1945 (Tr. p. 262) admitted that within his recollection, there has never been a Filipino on the grand jury, that there are qualified Filipino persons in Maui County, and that the Jury Commissioners had never gone out of their way to get a Filipino on the grand jury (Tr. pp. 305-6); that plaintiffs showed that Filipinos constitute the second largest racial group in Maui County comprising eighteen (18%) per cent of the population (Table I, attached hereto), that there are Filipinos who are qualified for jury service, and that a large number of the plaintiffs are of Filipino nationality.

4. That although the returned questionnaires of Filipino citizens showed qualifications equal to or greater than some returned questionnaires of Caucasians, the returns of the Filipinos were marked by the defendant Jury Commissioners "questionable" or "not qualified," whereas the returns of said Caucasians were marked "qualified." (Tr. pp. 323-334.)

5. That the Jury Commissioners selected sixty-six (66%) per cent of the jury list or thirty-three (33) persons who are employed in managerial and proprietary capacities (as shown by Tables 3-5, Movants Exhibits 7-9, Tr. pp. 96-113, copies of which are attached hereto), which employment group represents only approximately 3.8 per cent of the population of Maui County; and that the Jury Commissioners selected two (2%) per cent

of the names on the jury list or one (1) person who is employed as an agricultural worker to which all the plaintiffs belong and which class represents approximately forty-six (46%) per cent of the population of Maui County.

6. That plaintiffs showed by the uncontradicted testimony of the Jury Commissioners that they selected the jury list from persons personally known to one or more of the Jury Commissioners (Judge Wirtz, Tr. p. 215; Chatterton, Tr. p. 366; Pombo, Tr. pp. 292-293).

7. That the clear and unmistakeable implication of the testimony of two of the jury commissioners (Tr. pp. 318-319, 343-345, pp. 352-353, p. 361) was that they selected a large number of businessmen because they believed businessmen and clerical employers better qualified and more competent jurors than the ordinary worker and that they considered a large number of the jurors selected men of outstanding business ability; that they put the same men back on the jury in successive years and alternate because they were "good jurors." (Tr. pp. 244-273.)

8. That the Jury Commissioners requested on the questionnaire sent out by them (Movants' Exhibit 12, Tr. p. 206, a copy of which is attached), information as to race and occupation, and hence that the Jury Commissioners were aware of the race and occupation of all persons to whom questionnaires were sent.

9. That the Jury Commissioners selected members of the Caucasian race and representatives of the employer class and interests in numbers so wholly disproportionate to the number of persons of these groups in the community and among those qualified for jury service that the defendants' position that the list selected represented a cross-section of the community was untenable; that plaintiffs showed that disproportion in these identical respects has continued without appreciable variation in percentage or numbers for at least five years prior to 1947. (Tables 1-5, Movants' Exhibits 6-9, Tr. pp. 67-113.)

10. That the failure of the Jury Commissioners to select representatives of the non-Caucasian races and members of the employee or working class in proportion to the number of these groups meeting the standards for jury service made defendants' position that the grand jury selected represented a cross-section wholly untenable; that plaintiffs showed this failure has persisted without changes for at least five years prior to 1947.

Dated: Honolulu, T. H., January 28, 1948.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs.

[Endorsed]: Filed Jan. 28, 1948.

MINUTES OF APRIL 19, 1948

Motions to dismiss the actions in toto, motions for summary judgments in favor of the defendants, and, alternatively, that if the actions be not wholly dismissed or if summary judgment be not entered for the defendants, that the actions be dismissed as to certain of the defendants, and that the plaintiffs be required to make certain matters in the complaints more definite, and that the plaintiffs be required to make a more definite statement of their several claims so as to state in a separate count each claim founded on a separate transaction or occurrence, have been filed in both Civil Nos. 828 and 836.

As to those parts of the Motions requesting that the claims set forth in the complaint be made more definite and certain, we are of the opinion that the protracted arguments of the last three days have demonstrated that the defendants, and their able counsel are fully informed of the nature of the complaints and that no further particularization or specification by the plaintiffs is necessary. Accordingly, these portions of the Motions will be denied and Orders to such effect will be entered.

As to those portions of the Motions going to the dismissal of the actions as to particular defendants, respecting misjoinder, lack of jurisdiction, or otherwise (that portion of the Motions going to the dismissal of the action as to the Honorable Cable A. Wirtz, Circuit Court Judge of the County of Maui, will serve as an example) the court presently will express no opinion and will retain these parts of the

Motions for further consideration and ultimate disposition at an appropriate time.

As to all other parts of the Motions, the court is of the opinion that they must be denied and Orders to such effect will be entered.

April 19, 1948.

J. B., Jr.,

D. E. M.,

G. B. H.

[Title of District Court and Cause.]

ORDER

Before: Biggs, Circuit Judge, and Metzger and Harris, District Judges.

And, now, to wit, this 19th day of April, 1948, upon consideration of the briefs and arguments of the respective parties by their counsel in the above entitled cause on the motion for more definite statement, for the dismissal of the action and for summary judgment, It Is Ordered:

(a) That that part of the motion to the effect that the claims be made more definite and certain,
(b)

That that part of the motion moving for summary judgment in favor of the defendants, and (c)

That that portions of the motion moving for dismissal of the action, be and the same hereby are denied: and

It Is Further Ordered that those portions of the motion going to the dismissal of the action as to particular defendants, respecting misjoinder, lack of jurisdiction, or otherwise be and the same hereby are retained for further consideration and for ultimate disposition at an appropriate time:

For the Court:

/s/ JOHN BIGGS, JR.,

/s/ DELBERT E. METZGER,

/s/ GEORGE B. HADDE.

[Endorsed]: Filed April 20, 1948.

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the plaintiffs and defendants in the above-entitled action, by their respective counsel, but for the purposes of this action only, that:

1. With respect to paragraph I of the complaint, it is stipulated that the International Longshoremen's and Warehousemen's Union, hereinafter referred to as ILWU, one of the plaintiffs above named, is a voluntary unincorporated association and labor union having a membership of approximately 30,000 persons in the Territory of Hawaii, said members generally being employed as wage earners in the sugar, pineapple and longshore industries. At the time this action was filed there was a Territorial Council of said ILWU, of which the plaintiff, Jack Kawano, was president as well as

being a member of the ILWU; that at the present time said Territorial council is no longer in existence and said Jack Kawano, besides being a member of said ILWU, is president of International Longshoremen's and Warehousemen's Union, Local 137, consisting of the longshoremen members of the union in the Territory of Hawaii.

2. The citizenship of the individual plaintiffs (other than Kawano) is as set forth in the paragraph II of the complaint, and their race is as set forth in the schedule in said paragraph II and the allegations which follow said schedule, also in the affidavit of Harriet Bouslog filed January 7, 1948. No stipulation is made as the custom or practice of the Hawaiian Islands in classifying persons as Caucasians or otherwise. All of said individual plaintiffs are residents of the Territory of Hawaii and members of said ILWU, and with the exception of said Kawano, at all times here involved were and at the time the complaint was filed were wage earners employed by Hawaiian Pineapple Company, Limited.

3. Paragraph III is stipulated to except as to the last paragraph thereof, and in that connection it is stipulated that the defendants named therein went out of office as grand jurors as of January 12, 1948.

4. With reference to paragraph VIII it is stipulated that from July 10, 1947 to and including July 15, 1947 a labor dispute existed in the Territory of Hawaii, and among other members of the ILWU on

strike were many employees of Hawaiian Pineapple Company, including the individual plaintiffs other than Kawano.

5. With reference to paragraph IX it is stipulated that the individual plaintiffs named in the complaints were arrested by the defendant, Maui Chief of Police Jean Lane, or his agents, officers, employees and representatives, and charged as set forth in three certain complaints, being Exhibits D and E attached to the complaint, and Exhibit F attached to the stipulation of December 31, 1947.

6. With reference to paragraphs X and XII, it is stipulated that the grand jurors referred to herein were duly called to meet on July 25, 1947, and that prior thereto counsel for certain of the plaintiffs made and filed certain motions and challenges in the Circuit Court for the Second Judicial Circuit wherein said plaintiffs sought the disqualification and dismissal of the grand jurors. For the purposes of this case it is stipulated that the court may deem the same motions and challenges to have been made by the remaining individual plaintiffs who became plaintiffs in this case by the stipulation of December 31, 1947.

7. It is stipulated that the following exhibits are deemed admitted in evidence.

1. Plaintiffs' Exhibit D—Criminal Complaint against Barbosa and ten others. Filing Date: December 1, 1947, annexed to complaint.

2. Defendants' Exhibit H—Commitment of Bar-

bosa and ten others to await action of grand jury. Filing Date: December 10, 1947, in open court.

3. Plaintiffs' Exhibit E—Criminal Complaint against Makekau and four others. Filing Date: December 1, 1947, annexed to complaint.

4. Defendants' Exhibit G—Commitment of Makekau and four others to await action of grand jury. Filing Date: December 10, 1947, in open court.

5. Defendants' Exhibit K—Criminal Complaint against and commitment of Agliam and thirty-five others to await action of the grand jury. Filing Date: January 14, 1948, appended to motion.

6. Defendants' Exhibit L—Certificate as to the drawing of the 1948 grand jury. Filing Date: January 17, 1948, supplementing motion filed January 14, 1948.

7. Defendants' Exhibit N—Rules of Supreme Court of Hawaii relating to grand juries. Filing Date: January 20, 1948, appended to motion filed in Civil No. 836.

8. It Is Stipulated that the record of the proceedings before Young Wa, Acting District Magistrate of the District Court of Lanai, on the preliminary hearing had by the plaintiffs Agliam and others, including the testimony taken, as certified by said Acting District Magistrate to the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, and thence certified by the deputy clerk of said Circuit Court, filed in this cause by defendants as their Exhibit K, appended to their motion of January 14, 1948, shall be deemed in evidence in this case

with the same effect as if said testimony were adduced by the defendants in this court, the entire record also being deemed in evidence before this court, subject to all legal objections not hereinabove waived.

9. It Is Stipulated that the exhibits received in the above mentioned preliminary hearing by said Young Wa, Acting District Magistrate of the District Court of Lanai, as prosecution's Exhibits A to G, inclusive, and transmitted by him to the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, upon production by the defendants in this court shall be deemed in evidence in this case, subject to all legal objections not hereinabove waived.

10. It Is Stipulated that the following shall be deemed admitted in evidence:

Defendants' Exhibit C-1, Certificate of Disqualification of Judge Wirtz, filed December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit C-2, Supplemental Certificate of Disqualification of Judge Wirtz, filed on December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit D, Order and Authorization to Judge A. M. Cristy, filed on December 8, 1947 with the return to the order to show cause;

Defendants' Exhibit E, motions and challenges to the grand jury made by Barbosa and certain others filed on December 8, 1947 with the return to the order to show cause.

11. It Is Stipulated that the record of the pro-

ceedings before the Honorable A. M. Cristy, including the testimony taken as transcribed by the court reporter of the Second Judicial Circuit, said transcript of record having been heretofore filed in this court, shall be deemed in evidence in this case with the same effect as if said testimony were adduced by the respective parties in this court, the entire record also being deemed in evidence before this court, subject to all legal objections not hereinabove waived.

12. It Is Stipulated that the exhibits received by said Honorable A. M. Cristy, upon production in this court shall be deemed in evidence in this case, subject to all legal objections not hereinabove waived.

13. All parties reserve the right to introduce such further evidence and exhibits as may be material.

Dated at Honolulu, T. H., this 22nd day of April, 1948.

/s/ HARRIET BOUSLOG,

/s/ MYER C. SYMONDS,

Attorneys for Plaintiffs,

/s/ RHODA V. LEWIS,

Assistant Attorney General,

/s/ WENDELL F. CROCKETT,

Attorneys for Defendants.

[Endorsed]: Filed April 23, 1948.

[Title of District Court and Cause.]

ANSWER

Come now the defendants above named and for answer to the complaint herein :

I.

Deny all the material allegations thereof not stipulated by the stipulation between the parties dated April 22, 1948.

II.

Aver that the criminal complaints against and warrants of arrests for the plaintiffs, Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Bartolome Agliam, Guilhermo Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Polipala, Norberto Quinton, George Ramaila, Melecio Rectorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Suterio Unciano, Andres Velasco and Daniel

Kaopuiki, were made and issued as a result of the incidents and occurrences at Kaumalapau Wharf, Island of Lanai, County of Maui, Second Judicial Circuit, Territory of Hawaii, hereinbelow set forth, and as a result of evidence that said plaintiffs were principals in the offenses then and thereby committed, to wit: that on the 14th day of July 1947, said plaintiffs, having with divers other persons, the total numbering in excess of 125, assembled together, and having organized and formed a picketing line at the entrance to the Kaumalapau Wharf of the Hawaiian Pineapple Company, Limited on the said Island of Lanai, after being so assembled together, did, with other persons unnamed, in a violent and tumultuous manner rush en masse from such picketing line on to said dock where certain employees of said Hawaiian Pineapple Company, Limited, namely, Anthony Fernandes, Frederick S. Johnson, Jerome Harrington, Carl Kluge, Charles Marques and Buck Manriki, were at work for and on behalf of said company, engaged in loading pineapples on to a barge for transportation to the cannery at Honolulu, and the said plaintiffs, together with said other persons, did knock down, strike, beat with their fists and inflict wounds and injuries to and upon and otherwise assault such employees at work as aforesaid and by such assaults as aforesaid did intimidate and terrify and prevent such employees from continuing with and engaging in their employment; that the said plaintiffs and other person by participating in, promoting, aiding and

abetting such violent and tumultuous rush on to said dock and said actions and conduct which followed, in the manner aforesaid, did act unlawfully, maliciously and without authority in law, and such acts were not lawful, peaceful or constitutionally protected activities of free speech or press, peaceable assemblage, or peaceful picketing.

III.

Aver that the criminal complaint against and warrant for arrest for the plaintiffs, Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes were made and issued as a result of an incident and occurrence at Lanai City, Island of Lanai, County of Maui, Second Judicial Circuit, Territory of Hawaii, hereinbelow set forth, and as a result of evidence that said plaintiffs were principals in the offenses then and thereby committed, to wit: that on the morning of the 15th day of July 1947, said plaintiffs, together with divers other persons, the total numbering in excess of 25, having assembled together, after being so assembled together did proceed to the home of Jacob Kalua Nahinu and Sam Kalua at said Lanai City, Island of Lanai, at about five o'clock a.m. on said day, and there, on the home premises of said Jacob Kalua Nahinu and Sam Kalua, while they were preparing to go to work as employees of Hawaiian Pineapple Company, said plaintiffs together with said other unnamed persons, suddenly and without any provocation, assaulted, beat with their fists, and inflicted wounds on and injuries to said Jacob

Kalua Nahinu and Sam Kalua, and by such assaults as aforesaid did intimidate and terrify said Jacob Kalua Nahinu and Sam Kalua and did prevent them from going to their place of employment; that the said plaintiffs and other persons, by participating in, promoting, aiding and abetting such violent and tumultuous entry upon the home premises of said Jacob Kalua Nahinu and Sam Kalua, and said actions and conduct which followed, in the manner aforesaid, did act unlawfully, maliciously, and without authority in law, and such acts were not lawful, peaceful or constitutionally protected activities of free speech or press, peaceable assemblage, or peaceful picketing.

Dated in Honolulu, T. H., this 22nd day of April 1948.

/s/ RHODA V. LEWIS,

Assistant Attorney General,
Territory of Hawaii,

/s/ WENDELL F. CROCKETT,

Deputy County Attorney,
County of Maui,

Attorneys for Defendants.

(Endorsed) Filed April 23, 1948.

EXHIBIT E

District Court of Lanai, County of Maui,
Territory of Hawaii

COMPLAINT

Andrew S. Freitas, first being duly sworn says:
That Abraham Makekau, Elpidio Siruet, Mariano

Baldua, Narcisso Sipe, Antonio Mendes in Lanai City, District of Lanai, County of Maui, Territory of Hawaii, on to-wit the 15th day of July, 1947, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror tending and intending to strike terror into others, thereby being in unlawfull assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence to-wit: assaulting, beating, striking, pushing, shoving, inflicting corporal injuries and using menacing language and gestures and other hostile signs and demonstrations tending and intending to strike terror into one Jacob Kalua Nahinu and thereby endangering the life, limb, health and liberty of him the said Jacob Kalua Nahinu contrary to the form of the statutes in such cases made and provided.

/s/ ANDREW S. FREITAS.

Subscribed and sworn to before me this 15th day of July, A.D., 1947.

/s/ YOUNG WA,

District Magistrate of Lanai,
County of Maui.

[Endorsed]: Filed April 23, 1948.

In the United States District Court
for the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Hawaii,
Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary
unincorporated association and labor union,
et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Hawaii,
et al.,

Defendants.

ORDER OF CONSOLIDATION

Before: Biggs, Circuit Judge, and Metzger and
Harris, District Judges.

And, now, to wit, this 23rd day of April, 1948,

pursuant to oral stipulation, in open court, of the parties by their respective counsel,

It Is Ordered that the above entitled causes be and the same hereby are consolidated for hearing and trial.

For the Court:

/s/ JOHN BIGGS, JR.,

/s/ DELBERT E. METZGER,

/s/ GEORGE B. HADDE.

[Endorsed]: Filed April 23, 1948.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Thursday, April 15, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Mr. Walter D. Ackerman, Attorney General of the Territory of Hawaii, Mr. Robert Griffith and Miss Rhoda Lewis, Deputy Attorneys General of the Territory of Hawaii, counsel for the defendants herein. These cases were called for hearing on motion for more definite statement, motion to dismiss action, and for summary judgment as to each case.

Argument was had by Miss Lewis on said motions.

At 5:05 p.m., the Court ordered that these cases be continued to April 16, 1948 at 10 a.m. for further hearing.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Friday, April 16, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further hearing on motion for more definite statement, motion to dismiss action, and for summary judgment as to each case.

At 10 a.m., Miss Lewis continued her argument.

At 11:28 a.m., Mrs. Bouslog presented her argument.

At 12:50 p.m., the Court ordered that these cases be continued to 2:30 p.m. this day for further hearing.

At 2:34 p.m., Mrs. Bouslog continued her argument.

At 5:14 p.m., the Court ordered that these cases be continued to April 17, 1948 at 9:30 a.m. for further hearing.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Saturday, April 17, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further hearing on motion for more definite statement, motion to dismiss action, and for summary judgment as to each case.

At 9:40 a.m., Mrs. Bouslog continued her argument.

At 11:25 a.m., argument was had by Miss Lewis.

At 1:06 p.m., the Court ordered that these cases be continued to April 19, 1948 at 9:30 a.m. for further hearing.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Monday, April 19, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Grif-

fifth, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further hearing.

The Court, through Judge Biggs, rendered its decision on motion for more definite statement, motion to dismiss action, and for summary judgment as to each case. Said motions were denied by the Court.

A discussion was then had on the matter of procedure and trial herein.

At 3:20 p.m., the Court ordered that these cases be continued to April 20, 1948 for further discussion.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Tuesday, April 20, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for hearing on agreement of counsel as to stipulation of evidence and trial herein.

Following a further discussion by counsel, the Court ordered that these cases be set for trial—Friday, April 23, 1948 for plaintiffs' case and Saturday, April 24, 1948 for defendants' case and rebuttal by plaintiffs.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Friday, April 23, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for trial.

Mr. Jack W. Hall, regional director, International Longshoremen's & Warehousemen's Union, was called and sworn and testified on behalf of the plaintiffs.

War Food Administration Bulletins—Determination of Fair and Reasonable Wage rates for Persons employed in the Production, Cultivation, or Harvesting of Sugar Cane in Hawaii during Calendar years 1943 and 1944 were admitted in evidence as Plaintiffs' Exhibit No. 1, marked and ordered filed.

Copy of Agreement between Waialua Agricultural Company, Ltd., and ILWU Local 145-7 Waialua, dated September 29, 1945, was admitted in evidence as Plaintiffs' Exhibit No. 2, marked and ordered filed.

Copy of Agreement between the ILWU and Hawaii's Sugar Industry, 1947-48 was admitted in evidence as Plaintiffs' Exhibit No. 3, marked and ordered filed.

Copy of Letter dated July 11, 1946, ILWU to Hawaiian Sugar Planters' Association re: union demands for amendments to and modification of collective bargaining agreements was admitted in evidence as Plaintiff's Exhibit No. 4, marked and ordered filed.

Mr. Antonio T. Rania was called and sworn and testified on behalf of the plaintiffs.

Mr. Shigeto Minami was called and sworn and testified on behalf of the plaintiffs.

Mr. Mac Masato Yamuchi was called and sworn and testified on behalf of the plaintiffs.

Copy of Complaint, District Court of Wailuku, Maui, against Mac Masato Yamauchi, et al., was admitted in evidence as Plaintiffs' Exhibit No. 5, marked and ordered filed.

Copy of Indictment, Second Judicial Circuit Court, Wailuku, Maui, Territory of Hawaii, vs. Mac Masato Yamauchi was admitted in evidence as Plaintiffs' Exhibit No. 6, marked and ordered filed.

Copy of Judgment and Sentence, Second Judicial Circuit Court, Wailuku, Maui, Territory of Hawaii

vs. Mac Yamauchi was admitted in evidence as Plaintiffs' Exhibit No. 7, marked and ordered filed.

Mr. Nicholas C. Sibolboro was called and sworn and testified on behalf of the plaintiffs.

Mr. Charles C. Young, Assistant Manager, Maui Publishing Company, was called and sworn and testified on behalf of the plaintiffs.

Mr. Joseph K. Kaholokula was called and sworn and testified on behalf of the plaintiffs.

Copy of Indictment, Second Judicial Circuit Court, Wailuku, Maui, Territory of Hawaii vs. Joseph Kaholokula, et al., was admitted in evidence as Plaintiffs' Exhibit No. 9, marked and ordered filed.

Mr. Young was recalled to the witness stand and testified further.

At 12:24 p.m., the Court ordered that these cases be continued to 2 p.m. this day for further trial.

At 2:08 p.m., Mr. Kaholokula was recalled to the witness stand and testified further.

Copy of Plantation House Rules, Hawaiian Commercial & Sugar Co., Ltd., was admitted in evidence as Plaintiffs' Exhibit No. 10, marked and ordered filed.

Five photographs showing picket line, Paia, Maui, T. H., were admitted in evidence as Defendants' Exhibits "A-1" to "A-5," marked and ordered filed.

Mr. Benjamin K. Awana was called and sworn and testified on behalf of the plaintiffs.

Copy of Sections 11751 and 1171, Session Laws

of Hawaii, 1945, was admitted in evidence as Plaintiffs' Exhibit No. 11, marked and ordered filed.

Mr. Pedro de la Cruz called and sworn and testified on behalf of the plaintiffs.

Copy of House Rules of the Hawaiian Pineapple Co. in force on Lanai, July 1946, and a copy of safety rules of said company, were admitted in evidence as Plaintiffs' Exhibit No. 12, marked and ordered filed.

Mr. Noboru Honda was called and sworn and testified on behalf of the plaintiffs.

Mr. Kazuichi Hashimoto was called and sworn and testified on behalf of the plaintiffs.

Mr. Masao Gima was called and sworn and testified on behalf of the plaintiffs.

Mr. Hiroshi Oshiro was called and sworn and testified on behalf of the plaintiffs.

Map of wharf, Kaunalapau Harbor, Lanai, T. H., was admitted in evidence as Defendants' Exhibit "B," marked and ordered filed.

Six photographs. Kaunalapau Harbor, Lanai, T. H., were admitted in evidence as Defendants' Exhibits "C-1" to "C-6," marked and ordered filed.

Mr. Shigeru Yagi was called and sworn and testified on behalf of the plaintiffs.

Mr. Henry Q. Aki was called and sworn and testified on behalf of the plaintiffs.

Mr. Narcisso Sipe was called and sworn and testified on behalf of the plaintiffs.

Mr. Abraham Makekau was called and sworn and testified on behalf of the plaintiffs.

At 4:55 p.m., the Court ordered that these cases

be continued to April 24, 1948 at 9:30 a.m. for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Saturday, April 24, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further trial.

Mr. Nicholas C. Sibolboro was recalled to the witness stand and testified further.

Copy of Oral Decision rendered on December 23, 1947, in Criminal No. 2242, Second Judicial Circuit Court, Wailuku, Maui, Territory of Hawaii, vs. Basiliso Arruiza was admitted in evidence as Plaintiffs' Exhibit No. 13, marked and ordered filed.

Mr. Jack Kawano was called and sworn and testified on behalf of the plaintiffs.

Mr. John B. Cockett, Clerk, Second Judicial Circuit Court, Wailuku, Maui, was called and sworn and testified on behalf of the plaintiffs.

Three large envelopes containing records of Criminal Nos. 2412 and 2413 of the Second Judicial Circuit Court, Wailuku, Maui, were marked for identification as Plaintiffs' 14, 15, and 16.

Report of the Jury Commissioners, and lists of names of persons selected to serve as jurors in and for the Second Judicial Circuit Court. Wailuku, Maui, for the year 1948 were admitted in evidence as Defendants' Exhibit "D," marked and ordered filed.

Mr. John E. Reinecke was called and sworn and testified on behalf of the plaintiffs.

Excerpt from Interracial Marriage in Hawaii, etc., by Romanzo Adams, on definition of "haole," was admitted in evidence as Plaintiffs' Exhibit No. 17, marked and ordered filed.

1947 Annual Report of Pioneer Mill Company, Ltd., and Maui Agricultural Company, Ltd., and a copy of Occupational Index, by races, Territory of Hawaii, 1940, were admitted in evidence as Plaintiffs' Exhibit No. 18, marked and ordered filed.

Copy of Bulletin No. 687, United States Department of Labor on Labor in the Territory of Hawaii, 1939, was admitted in evidence as Plaintiffs' Exhibit No. 19, marked and ordered filed.

Table showing percentage of "Other Caucasians" in population of Maui County and on Grand Jury Panel for years 1942 to 1947; and table showing proportion of "Other Caucasians" in total population of Maui County, 1920 to 1940, were admitted in evidence as Plaintiffs' Exhibit No. 20, marked and ordered filed.

Table of racial and/or national extraction and occupation of persons on Maui Grand Jury list, 1947, was admitted in evidence as Plaintiffs' Exhibit No. 21, marked and ordered filed.

At 12:30 p.m., the Court ordered that these cases be continued to 2 p.m. this day for further trial.

At 2 p.m., the witness Reinecke resumed the witness stand and testified further.

Certificate of Eugene Bal, Clerk of Maui County, showing number of Filipino voters registered for the election years covering 1934-1946, was admitted in evidence as Plaintiffs' Exhibit No. 22, marked and ordered filed.

Photostatic copies of returned questionnaires of Grand Jurors, Maui County, 1948, on file with the Second Judicial Circuit Court, were admitted in evidence as Plaintiffs' Exhibit No. 23, marked and ordered filed.

Photostatic copies of returned questionnaires of Prospective Jurors, Second Judicial Circuit Court, persons of Filipino nationality, were admitted in evidence as Plaintiffs' Exhibit No. 24, marked and ordered filed.

Movants' Exhibits 1 to 21, Criminal Nos. 2412 and 2413, Second Judicial Circuit Court, Wailuku, Maui, were admitted in evidence as Plaintiffs' Exhibit No. 25, marked and ordered filed.

Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, was called and sworn and testified on behalf of the plaintiffs.

Mrs. Harriet Bouslog was sworn and testified on behalf of the plaintiffs.

List of Haoles on Grand Jury Panels, years 1944, 1945, 1946, and 1947, was admitted in evidence as Plaintiffs' Exhibit No. 26, marked and ordered filed.

At 3:23 p.m., the plaintiffs rested their case.

Ruling on motion to dismiss made by Miss Lewis was reserved by the Court.

Copy of Hawaiian Sugar Planters' Association Census of Hawaiian Sugar Plantations, June 30, 1947, ILWU Research Department, Hawaii Regional Office, was admitted in evidence as Plaintiffs' Exhibit No. 27, marked and ordered filed.

At 3:37 p.m., Mr. John B. Cockett was recalled to the witness stand and testified on behalf of the defendants.

Movie reels and album of photographs were admitted in evidence as Defendants' Exhibits "E-1" to "E-5," marked and ordered filed.

Plaintiffs' Nos. 14 and 16 heretofore marked for identification, were admitted in evidence as Plaintiffs' Exhibits Nos. 14 and 16, marked and ordered filed.

Map of Lanai City, Lanai, T. H., was admitted in evidence as Defendants' Exhibit "F," marked and ordered filed.

Mr. Jacob Kalua Nahinu was called and sworn and testified on behalf of the defendants.

Photographs of employees' homes, Hawaiian Pineapple Company, Lanai, T. H., were admitted in evidence as Defendants' Exhibits "G-1" to "G-4," marked and ordered filed.

Photographs of employees' homes, Hawaiian Pineapple Company, Lanai, T. H., were admitted in evidence as Defendants' Exhibits "H-1" and "H-2," marked and ordered filed.

Photographs of Jacob Kalua Nahinu were ad-

mitted in evidence as Defendants' Exhibits "I-1" and "I-2," marked and ordered filed.

Mr. Samuel Kalua was called and sworn and testified on behalf of the defendants.

At 4:25 p.m., the Court ordered that these cases be continued to Monday, April 26, 1948, at 9:30 a.m., for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Monday, April 26, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further trial.

Maps of the Hawaiian Archipelago, Maui, and Lanai, were admitted in evidence as Defendants' Exhibits "J-1" to "J-3," marked and ordered filed.

At 10:05 a.m., the movie reels admitted as Defendants' Exhibits "E-1" to "E-4," were shown.

At 11:00 a.m., Mr. Andrew S. Freitas, Assistant Chief of Police, County of Maui, was called and sworn and testified on behalf of the defendants.

Police Officer's Commission of Andrew S. Frei-

tas was admitted in evidence as Defendants' Exhibit "K," marked and ordered filed.

Photographs, Kaumalapau Harbor, Lanai, T. H., were admitted in evidence as Defendants' Exhibits "L-1" to "L-3," marked and ordered filed.

At 12:35 p.m., the Court ordered that these cases be continued to 2 p.m. this day for further trial.

At 2 p.m., Mr. Freitas resumed the witness stand and testified further.

Booklet, Maui Grand Hotel, showing map of Maui, T. H., was admitted in evidence as Defendants' Exhibit "M," marked and ordered filed.

Copy of Maui Police Commission as constituted during the calendar years 1946 and 1947 was admitted in evidence as Plaintiffs' Exhibit No. 28, marked and ordered filed.

Photograph, being Petitioner's Exhibit D, in Equity No. 325, Second Judicial Circuit Court, Wailuku, Maui, Maui Agricultural Co., Ltd., vs. ILWU, was admitted in evidence as Plaintiffs' Exhibit No. 29, marked and ordered filed.

Mr. Henry K. Long, Jr., Captain of the Police, Makawao District, County of Maui, was called and sworn and testified on behalf of the defendants.

Mr. John E. Seabury, Captain, Detective Division, County of Maui Police Force, was called and sworn and testified on behalf of the defendants.

Copy of Statement taken from Abraham Makekau on July 15, 1947, by Captain J. D. Seabury, was admitted in evidence as Defendants' Exhibit "N," marked and ordered filed.

Mr. Neil Donoghue, temporary Captain, Police Department, assigned to the Vice Division, was called and sworn and testified on behalf of the defendants.

Copy of Information, Summary Contempt Proceedings, Second Judicial Circuit Court, Wailuku, Maui, T. H., against Augustine Duz, et al., was admitted in evidence as Defendants' Exhibit "O," marked and ordered filed.

At 4:39 p.m., the defendants rested their case.

At 4:50 p.m., the Court ordered that these cases be continued to Tuesday, April 27, 1948, at 10 a.m. for further trial.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Tuesday, April 27, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further trial.

Mr. Benjamin K. Awana was recalled to the witness stand and testified on rebuttal.

Mr. Barcelino Pacpaco was called and sworn and testified on behalf of the plaintiffs.

Copy of the Constitution and By-Laws of the Oriental Benevolent Association was admitted in evidence as Plaintiffs' Exhibit No. 30, marked and ordered filed.

Mr. Pedro de la Cruz was recalled to the witness stand and testified on rebuttal.

Statement taken from Mac Masato Yamauchi before assistant Chief of Police Freitas on November 7, 1946, was admitted in evidence as Plaintiffs' Exhibit No. 31, marked and ordered filed.

At 11:20 a.m., both sides rested.

The Court ordered that these cases be continued to Saturday, May 1, 1948, for argument.

From the Minutes of the United States District
Court for the District of Hawaii

[Title of Causes.]

Saturday, May 1, 1948

On this day came Mrs. Harriet Bouslog and Mr. Myer C. Symonds, counsel for the plaintiffs herein, and also came Miss Rhoda Lewis, Mr. Robert Griffith, Deputy Attorneys General of the Territory of Hawaii, and Mr. Wendell F. Crockett, Deputy County Attorney, County of Maui, counsel for the defendants herein. These cases were called for further trial.

Certificate of the Treasurer of the Territory of Hawaii to the Amended By-Laws of the Oriental Benevolent Association was admitted in evidence as Plaintiffs' Exhibit No. 32, marked and ordered filed.

Copy of Letter from Maui Chamber of Commerce

dated April 29, 1947, to Harriet Bouslog was admitted in evidence as Plaintiffs' Exhibit No. 8, marked and ordered filed.

One movie reel was admitted in evidence as Plaintiffs' Exhibit No. 33, to be furnished later.

List of Filipino voters, Maui County 1946, was admitted in evidence as Plaintiffs' Exhibit No. 22-A, marked and ordered filed.

Plaintiffs' Exhibits Nos. 14 and 16 were remarked as Court's Exhibits Nos. 1 and 2, respectively.

Biographical sketch, William Little Lee, First Chief Justice of the Hawaiian Supreme Court, was admitted in evidence as Defendants' Exhibit "P," marked and ordered filed.

Report of the Hawaiian Commission, appointed in pursuance of the "Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States," approved July 7, 1898; together with a copy of the Civil and Penal Laws of Hawaii, was admitted in evidence as Defendants' Exhibit "Q," marked and ordered filed.

Excerpt of Report No. 305, House of Representatives, Government for the Territory of Hawaii, re: The Judiciary of the Territory of Hawaii and of the New Territory after its Organization, was admitted in evidence as Defendants' Exhibit "R," marked and ordered filed.

At 9:50 a.m., argument was had by Mrs. Bouslog.

At 12:05 p.m., argument was had by Mr. Crockett, followed at 12:21 p.m. by argument by Miss Lewis.

At 1:01 p.m., these cases were taken under advisement.

In the United States District Court for the
District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union;
TERRITORIAL COUNCIL OF INTERNA-
TIONAL LONGSHOREMEN'S & WARE-
HOUSEMEN'S UNION, a voluntary, unin-
corporated association and labor union; JACK
KAWANO, individually and as a member of
the ILWU and as President of the Territorial
Council of the ILWU, DIEGO BARBOSA,
JOHN MAILE, VICTOR DEGAMO,
HARRY KAPENA KAOPUIKI, ISAMI A.
NITTA, AH SING AH HO, JAMES KIA
AIKALA, SHIGERU YAGI, BASILISO
ARRUIZA, MIDORI ODA, SHIGEYUKI
MATSUURA, ABRAHAM MAKEKAU, EL-
PIDIO SIRUET, MARIANO BALDUA,
NARCISSE SIPE and ANTONIO MENDES,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii; INGRAM M. STAINBACK, individu-
ally and as Governor of the Territory of
Hawaii; E. R. BEVINS, individually and as
County Attorney for the County of Maui;

WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui; JEAN LANE, individually and as Chief of Police of the County of Maui; CABLE A. WIRTZ, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; AUGUSTINE POMBO and CLAUDE E. CHATTERTON, both individually and as Jury Commissioners of the County of Maui; KENNETH AULD, EDWARD H. BALDWIN, RICHARD H. BALDWIN, EDWARD S. BOWMER, ROBERT P. BRUCE, ALFRED S. BURNS, RALPH O. CORNWELL, JACK COSTA, E. STANLEY ELMORE, ALLAN H. EZELL, HENRY S. S. FONG, CHARLES GOODNESS, WALTER W. HOLT, IRVING MAEDA, H. S. PETERSON, JOHN PLUNKETT, PAUL H. REINHART, ANTHONY A. TAM, CHARLES E. THOMPSON, WAI KEN TOM, and JOSEPH H. TRASK, individually and as Grand Jurors of the County of Maui,

Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary, unincorporated association and labor union; ANTONIO T. RANIA, individually and as a member of the ILWU and as President of the

United Sugar Workers, ILWU Local 142,
JOSEPH KAHALOKULA, LEVI KEA-
LOHA, BENJAMIN KAHAAWINUI, BEN-
JAMIN AWANA, LECCADIO BALDOVI,
SOICHI DOI, YOSHIO NAGATA, LIONEL
HANAKAHI, JACK HAO, KOICHI ITO,
DAVID KINA, GEORGE KUKAHIKO,
CHARLES REVEIRA, TAKESHI SHI-
MANO, JOSEPH SEBASTIN ABREU,
RICHARD AH LEE SAM, FRANK R. AL-
VARES, LAMBERT APO, WILLIAM AU-
WELOA, ALFRED BOTEILHO, HARRY
BOTEILHO, ANTONE CALLIDO,
THOMAS COELHO, JOHN CORNIEL,
JOHN CRAVALHO, DANIEL CORNIEL,
CALIXTRO CASON, KIYOTO DOI, ERN-
EST FEITEIRA, JAMES BERISTO
FLORES, FRANK FRANCO, JULIO
FRANCO, ERNEST FERNANDEZ, HIRO-
SHI FUKUSHIMA, PULEHU FUKU-
SHIMA, ANTONE GOUVEIA, LOUIS
HERREIRA, JOSEPH HU, JUAN HARA,
JAMES F. HIGA, EDWARD GOMES JAR-
DIN, HAI CHOO KIM, ERNEST KAEA,
JOHN KAIO, SOLOMON KEALOA,
MARTIN LACIO, GEORGE LINDSEY,
GEORGE [2] MARTINS, FRED CARLOS
MEDEIROS, CHARLES PAULOS MONIZ,
JOHN NASCIMENTO, BUTA NAKASONE,
KIYOTO OGATA, JOHN ORTIZ, LAW-
RENCE TORRES PACHECO, ALFRED
PERREIRA, RAPHAEL PERRY, MAN-

UEL PERREIRA PICO, HENRY LEOPOLDO PONCE, MANUEL PONCE, JOE PETERS, JOSEPH PONCE, ROSARIO RAMOS, TAROICHI SASAOKA, HITOSHI SERA, MASAO SERA, LAWRENCE E. SHIROMA, FERMIN SOTO, WILLIAM SAKAIDA, EDWARD TAKEMURA, ROBERT TANIGUCHI, TAKEJI TOMITA, KIYOSHI TOSKA, ANTONE S. VIERRA, and MASARU YONEDA,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii; INGRAM M. STAINBACK, individually and as Governor of the Territory of Hawaii; E. R. BEVINS, individually and as County Attorney for the County of Maui, WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui, CABLE A. WIRTZ, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui; AUGUSTINE POMBO and CLAUDE E. CHATTERTON, both individually and as jury Commissioners of the County of Maui; KENNETH AULD, EDWARD H. BALDWIN, RICHARD H. BALDWIN, EDWARD S. BOWMER, ROBERT P. BRUCE, ALFRED S. BURNS, RALPH O. CORNWELL, JACK COSTA, E. STANLEY ELMORE, ALLAN

H. EZELL, HENRY S. S. FONG, CHARLES GOODNESS, WALTER W. HOLT, IRVING MAEDA, H. S. PETERSON, JOHN PLUNKETT, PAUL H. REINHART, ANTHONY A. TAM, CHARLES E. THOMPSON, WAI KEN TOM, and JOSEPH H. TRASK, individually and as Grand Jurors of the County of Maui.

Defendants. [3*]

Before: Biggs, Circuit Judge, Metzger, Chief Judge, and Harris, District Judge.

OPINION

By Biggs, Circuit Judge.

The Nature of the Proceedings

The two cases at bar may be disposed of in one opinion. The general jurisdiction of the court (its jurisdiction under Section 266 of the former Judicial Code and under Section 2281 of revised Title 28 of the United States Code, effective September 1, 1948, aside) is alleged to be founded on the second, third and fourth Federal Civil Rights Acts, Act of May 31, 1870, 16 Stat. 140, Act of April 20, 1871, 17 Stat. 13, and Act of March 1, 1875, 18 Stat. 335, 337, 8 U. S. C. A. Sections 41 (R. S. Section 1977), 43 (R. S. Section 1979), 44 and 46, and upon Section 24 (14) of the Judicial Code of 1911, now Section 1343 of revised Title 28 U. S. Code, and upon Amendments, I, V, VI, XIV and XIX to the

* Page numbering appearing at top of page of original certified Transcript of Record.

Constitution of the United States. Jurisdiction is also allegedly based upon Section 24 (1) of the Judicial Code of 1911, now revised Title 28, Section 1331, U. S. Code.¹

The complaints at the two numbers are quite similar in substance. The International Longshoremen's & Warehousemen's Union (ILWU), a voluntary unincorporated association and labor union, is a plaintiff at each number; [4] Kawano, individually and as a member of the ILWU and as president of what was the Territorial Council of the ILWU, is a plaintiff at No. 828. The no longer existent Territorial Council of the ILWU is also named as a plaintiff at this number. Rania, in his individual capacity and as president of the United Sugar Workers, ILWU, Local 142, is a plaintiff at No. 836. Both Rania and Kawano allege, as indi-

¹At No. 828, the plaintiffs by amendment set up jurisdictional amount and other allegations required by Section 24 (1) of the Judicial Code of 1911, now revised Title 28, Section 1331. Similar allegations are contained in the original complaint at No. 836. Jurisdiction in the cases at bar, however, lies in the court by virtue of Title 8 U.S.C. Section 43 (R.S. Section 1979), 8 U.S.C.A. Section 43, the Civil Rights Acts referred to above and Section 1343 of revised Title 28. Jurisdiction is also vested in this court by virtue of Section 1337 of revised Title 28. See the heading, "The General Jurisdiction of the Court".

The allegations as to jurisdictional amounts contained in the amendment at No. 828 and in the complaint at No. 836 deal with losses allegedly suffered by the ILWU, not by any local, and by individual plaintiffs. Pertinent findings as to jurisdictional amounts are made in note', *infra*.

cated, that they sue not only individually but in representative capacities on behalf of the ILWU's membership of approximately 30,000 persons in the Territory of Hawaii. The complaints assert that all other individual plaintiffs are residents of the Territory of Hawaii, members of the ILWU, and are daily wage earners in either the sugar industry or the pineapple industry of the Territory. This is found to be the fact. It is asserted that all the individual plaintiffs at both numbers, either ethnologically or as a matter of mores of the Islands,² are "members of races other than the Caucasian race." The particulars of these allegations were either proved or stipulated to.³ The races of the individual plaintiffs referred to were variously alleged, and proved or stipulated, to be the Malayan, the Polynesian and the Mongolian, sub widely varying national strains, viz., Filipino, Hawaiian, Hawaiian-Caucasian, Chinese, Japanese, Portuguese and Puerto Rican. These facts possess significance only in relation to the challenges and motions made to the jury commissioners of the Circuit Court of the Second Circuit of the Territory of Hawaii and to the motions and challenges made to the 1947 Maui County grand jury. Most of the in-

²This is applicable to Portuguese and Puerto Ricans and to persons whose ancestry contains either a Portuguese or a Puerto Rican strain, all of whom are considered by Island custom or mores to be non-Caucasians.

³See paragraph 2 of the stipulations of April 22, 1948 filed at Nos. 828 and 836.

dividual plaintiffs are alleged, and proved or stipulated to be citizens of the United States. Some of the individual plaintiffs are alleged, and proved or stipulated to be aliens and citizens of the Philippine Republic, or aliens and citizens of Japan, or aliens and citizens [5] of other nationalities. Again we deem these facts to be of significance only in relation to the attack on the jury commissioners or upon the grand jury of Maui County.

The defendants at both numbers are identical except that the defendant, Jean Lane, Chief of Police of Maui County, sued individually and as chief of police at No. 828, is not named as a defendant at No. 836. The defendant, Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, is sued individually and as attorney general. The Honorable Ingram M. Stainback, Governor of the Territory of Hawaii, is sued individually and as governor. E. R. Bevins, County Attorney of the County of Maui, and Wendell F. Crockett, Deputy County Attorney of the County of Maui, are sued individually and as County Attorney and Deputy County Attorney respectively. Judge Cable A. Wirtz, a Circuit Judge of the Territory of Hawaii, is sued individually and as one of the jury commissioners of Maui County. The jury commissioners and the 1947 grand jurors of the County of Maui are also sued individually and in their official capacities.

Both complaints allege *mutatis mutandis* that there were strikes conducted by the ILWU in the

sugar and pineapple industries in the Territory; that in furtherance of the objectives of the strikes, viz., improvement in wages, hours and conditions of employment, the individual plaintiffs engaged in "lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing."

The complaint at No. 828 alleges that Lane, Chief of Police of Maui County, caused the individual plaintiffs (other than Kawano) to be arrested and charged them with violations of an act of the Territory generally known as the unlawful assembly and riot statute, Revised Laws of Hawaii 1945, c. 277, Sections 11570-11584; that the plaintiffs Barbosa, Maile, Degamo, Kaopuiki, Nitta, Ah Ho, Aikala, Yagi, Arruiza, Oda and Matsuura were charged in a complaint executed before a district magistrate of [6] Maui County with violations of the same statute; and that the plaintiffs Makekau, Siruet, Baldua, Sipe and Mendes were similarly charged in a complaint also executed before a local magistrate. It is asserted also that the defendants Ackerman, Stainback, Bevins and Crockett have sought to present criminal charges framed on the complaints to the grand jurors of Maui County; that the defendants, Pombo and Chatterton, and Judge Wirtz, as jury commissioners, chose and composed Maui County grand juries in such a manner as to violate the constitutional rights of the plaintiffs and in violation of the laws of the United States and of the Territory of Hawaii.

The complaint goes on to recite that certain individual plaintiffs (particularly designated hereinafter) filed motions and challenges to the grand jury and to the methods employed in selecting its members for the reasons set out in the complaint, to be discussed hereinafter, that these charges and challenges were heard by the Honorable Albert M. Cristy, a Circuit Judge of the Territory of Hawaii, in mid-September 1947, but that he held the motions and challenges to be without merit, refusing to disqualify or to dismiss the grand jury. The plaintiffs then allege that the unlawful assembly and riot statute is unconstitutional in that it deprives them of their rights of free speech, press and assemblage and will subject them to criminal prosecutions if they exercise their constitutional rights. Agliam, Abraham Makekau, and thirty-four other additional plaintiffs were added as parties to the complaint by stipulation and by order of the court. It is alleged that these thirty-six individuals are held to bail under a complaint charging them also with violation of the unlawful assembly and riot statute.

The complaint closes with the prayers, *inter alia* (1), that a temporary and permanent injunction issue from this court prohibiting the enforcement of the unlawful assembly and riot act against the plaintiffs and enjoining the submission to the grand jury of facts relating to the plaintiffs' actions for indictment based on the unlawful assembly [7] and riot act; (2) that this court declare the statute to

be unconstitutional; (3) that we adjudge the method used in selecting the grand juries of Maui County to be unconstitutional and contrary to law and order the grand jury discharged; and (4) that a three judge court be convened pursuant to Section 266 of the Judicial Code of 1911, to determine the case.

The complaint at No. 836 attacks not only the unlawful assembly and riot statute referred to in the complaint at No. 828, but also attacks the conspiracy statute of the Territory of Hawaii, Revised Laws of Hawaii 1945, c. 243, Sections 11120-11130. It asserts inter alia that the defendants Ackerman, Stainback, Bevins and Crockett presented "purported criminal charges alleging violation of the * * * unlawful assembly and riot statute and the conspiracy statute" to the grand jurors of Maui County who returned an indictment⁴ against the individual plaintiffs (other than Rania) based on the two statutes referred to. The complaint then makes the same allegations respecting the jury commissioners and the means employed in selecting grand juries as are set out in the complaint at No. 828 and alleges that the unlawful assembly and riot statute and the conspiracy statute are unconstitutional. The complaint then goes on to assert that the defendants in two criminal complaints entitled Territory of Haawaii v. Diego Barbosa, et al., and

⁴This is No. 2365 in the Circuit Court of the Second Judicial Circuit. Cf. the earlier indictment of October 30, 1946, Plaintiffs' Exhibit No. 9, referred to hereinafter under the subheading "Evidence".

Territory of Hawaii v. Abraham Makekau, et al., pending in the Circuit Court of the Second Circuit, referred to at length hereinafter under later headings, challenged the means employed to select the grand juries of Maui County; that these challenges were heard by Judge Cristy and were disposed of unfavorably to the defendants. It is alleged also that all the defendants in the criminal complaints referred to are plaintiffs at No. 836.

The complaint asserts that unless the unlawful assembly and riot statute and the conspiracy statute are held [8] to be unconstitutional and void all the plaintiffs will be deprived of their constitutional rights and "that it is necessary and imperative that this court assume jurisdiction in the matter and restrain and enjoin defendants from prosecuting or taking any further proceedings in connection with that certain indictment pending in the Circuit Court for the Second Circuit, Territory of Hawaii, entitled Territory of Hawaii v. Joseph Kaholokula, et al., being Criminal Number 2365 * * * , in order that the plaintiffs shall have an impartial, representative and democratic Grand Jury."⁵

⁵The complaint at No. 836 contains a paragraph (XXI) which is devoted in substance to the financial losses and alleged damage to the ILWU and to the individual plaintiffs. As we have stated like allegations are set up in the amendment to the complaint at No. 828. The financial losses in each case are alleged to be in excess of \$3,000. In the view we take of the cases, insofar as jurisdiction is concerned, these allegations are immaterial.

But, if we are wrong in our decisions, to the end

The complaint ends with prayers substantially identical with those of the complaint at No. 828 but the first prayer asks specifically that the defendants Ackerman, Bevins and Crockett be enjoined from prosecuting or taking any further proceedings in connection with the Kaholokula indictment, Criminal No. 2365, now pending in the Circuit Court of the Second Circuit.

Upon presentation of the complaints to the United States District Court for the District of Hawaii, Senior District (now Chief) Judge Metzger issued rules to show cause and restraining orders in the usual form. Due to circumstances [9] over which the court had no control, delays were encountered in convening a court to dispose of the

that the causes may not have to be remanded by the reviewing Court for further findings, we find that losses resulting to the ILWU by reason of the enforcement of the unlawful assembly and riot act of Hawaii were in excess of \$3,000. We find that the enforcement of the statute caused a decrease in the membership of the union which loss resulted in the loss of dues to the union in excess of the amount of \$3,000.

As a matter of law these losses, since they resulted indirectly to the ILWU, are not cognizable as legal damages.

There are no allegations in either the complaint at No. 828, as amended, or in the complaint at No. 836, that individual locals of the ILWU suffered damages. Indeed, no local is named as a plaintiff in either action.

The damages to the individual plaintiffs in either action are not cognizable in terms of money.

This note and the findings contained therein are to be read in conjunction with those in note 1, *supra*.

cases. Motions were filed by the defendants in both cases for more definite statements, for the dismissal of the actions, for summary judgments, and for dismissal of the actions as to particular defendants on the grounds of misjoinder or lack of jurisdiction. Upon the convening of a court of three judges argument was had on these motions, briefs were filed and all were considered carefully by the court. On April 19, 1948 we entered an order denying the motions to make the claims more definite and certain, for summary judgments and for dismissal of the actions. The motions for dismissal as to particular defendants on the grounds of misjoinder or lack of jurisdiction were retained by the court for further consideration. At the request of the court, counsel entered into extensive stipulations respecting many undisputed facts. Answers were filed. It was in effect agreed by the parties that the court should proceed to final hearing,⁶ the defendants expressly reserving all their rights, including the right to renew every objection theretofore made by them or any of them as to the jurisdiction of the court over the parties, the causes of action alleged, or in respect to any other material

⁶Mr. Justice Stone and Mr. Justice Cardozo in their concurring opinion in *Borden's Co v. Baldwin*, 293 U.S. at p. 213, stated, "We are in accord with the view that it is inexpedient to determine grave constitutional questions upon a demurrer to a complaint, or upon an equivalent motion if there is a reasonable likelihood that the production of evidence will make the answer to the questions clearer." Such a likelihood existed in the instant cases.

matter. On April 23, 1948, and on successive days thereafter, the court heard the testimony of some thirty witnesses and received a very substantial number of exhibits. On the agreement of counsel for all the parties and with the permission of the court, the already voluminous record was supplemented with further exhibits. Briefs and requests for findings of fact and conclusions of law were filed later by the parties. [10]

EVIDENCE, SAVE AS TO THAT RELATING TO THE CHALLENGES TO THE JURY COMMISSIONERS AND THE GRAND JURIES OF MAUI COUNTY

For the sake of clarity we deem it desirable, if not necessary, to break down the statement of facts in this opinion into two parts. The first will deal with the labor picture in Hawaii and the incidents growing out of the strikes in the sugar and pineapple industries in the Territory. We will then discuss the law applicable to those facts. The second part of the fact statement will deal specifically with the motions and challenges to the jury commissioners and to the grand juries of Maui County. The second statement of facts will be found at a later point in this opinion and, immediately following it, a discussion of the pertinent law.

The ILWU and the Labor Picture

Hall, the Regional Director of the ILWU, testified that in 1944 the ILWU was engaged in organizing the sugar and pineapple workers in the Ter-

ritory; that the ILWU, following the organizational work referred to, represented substantially all⁷ of the sugar workers and a majority of the pineapple workers in the Islands; that the ILWU had spent about \$350,000 in the organization work and that it cost between \$600,000 and \$700,000 to administer the union in the course of a year and that this money was collected from dues-paying members. He stated also that as of 1943 the wages of the adult male workers had been fixed at \$1.84 a day by the War Food Administrator.⁸ To this was added a 15% bonus. At the time of the trial before us the approximate daily rate of pay of plantation common laborers or plantation harvesters was "well in excess of \$8.00 per day." The witness made it plain that in the contracts [11] negotiated with the sugar and pineapple industries by the union on behalf of its members there were and are no provisions for the arbitration of wage issues and that no employer in the two industries had ever submitted a wage issue to arbitration, and that the point on which negotiations had ruptured, bringing on the strikes referred to, was that of pay.

Hall testified also in substance that the enforcement of the unlawful assembly and conspiracy acts had necessitated a decision to terminate the pineap-

⁷Hall stated that only about 250 workmen, employees of two small companies, did not become members of the ILWU.

⁸See also Plaintiffs' Exhibit No. 1, S.D. No. 169, War Food Administration, Food Distribution Administration, Sugar Branch, issued June 25, 1943.

ple workers' strike. He said as well that " * * * during the sugar strike a considerable number of our members were charged with the violation of the Unlawful Assembly Statute, and because I was in consultation almost daily with the elected strike committee, we were informed by the workers on Maui that the charge had struck almost, you might describe it as terror into the workers involved there, because they felt that for carrying on legitimate picket activity and to face a sentence of twenty years meant that everything was being thrown at them, and the strike could not be effective." He said in respect to a contemplated strike by long-shoremen, members of the ILWU, that "it would be in effect suicide for the union to attempt to strike with such a statute hanging over their heads, a statute that could easily be invoked and has been in our opinion, or where there have been minor disturbances that might have been provoked by agents provocateur."

Hall's testimony stands virtually uncontradicted and we find his statements to be true. We think that we are entitled to find on this record, and we do find, that the ILWU, at all times pertinent to the instant disputes, has served and is serving as the collective bargaining agent for the sugar and pineapple workers in the Territory of Hawaii.

The labor picture and the sociological background of the sugar and pineapple industries in the Territory of Hawaii are indeed extraordinary. Ten owners own half [12] of all privately owned land in

Hawaii.⁹ The tendency in both industries has been toward larger plantations and toward the elimination of the so-called "adjacent planter" who by his very situation has become economically dependent on the larger plantation close to him. As it stated in the authority cited in footnote 9 *supra* and on the same page referred to in the note, "The land tenure system is quite different from that in any other part of the United States and is a legacy of the feudal system under native royalty which preceded annexation. At that time such lands as were suitable for sugar cultivation were owned in large tracts and were, therefore, leased or purchased in large tracts for plantation purposes. Nearly half of the land is still leased * * * Hawaiian sugar production from its very inception was on a larger scale than is typical of mainland farming. As the plantations have decreased in number, the output of the industry as a whole has increased in value." As the larger plantations have absorbed the smaller ones, a result economically though perhaps not socially desirable, the necessity of the majority of the inhabitants being employed by the larger operating companies has increased to the point where the bulk of the population on the "growing" islands could not exist without such employment. Moreover, most, if not all, of the employees live in com-

⁹See "Labor in the Territory of Hawaii, 1939", United States Department of Labor, Bulletin No. 687, Table 6 and notes cited to text at page 23. This bulletin is Plaintiffs' Exhibit No. 19.

pany houses in company towns and the tenure of their homes is dependent on their employment. Conversely, the companies cannot prosper or even operate without the labor, skilled and unskilled, of the residents of the growing islands. What has been said in respect to sugar growing is largely applicable to the pineapple industry as well.

The raising of sugar cane and the growing of pineapples are the two major industries of the Territory of Hawaii. A very substantial portion of the products of these industries moves in commerce to the mainland of the United [13] States. For example the raw sugar which the Territory of Hawaii has produced and will continue to produce in such vast quantities is sent almost entirely to the mainland for processing. These facts are common knowledge, of which we may take judicial notice, but see "Hawaii," published by the United States Department of the Interior, January 30, 1948, at pp. 8 and 19.

The tendency in both the sugar and pineapple industries, as the result of inexorable economic law operating against plantation owner or manager has been to compel them to get labor as cheaply as possible. To this end for over a hundred years, whether the owner or plantation manager has been native king or prince, Englishman, American or German, he has endeavored to bring into the Islands workers to cultivate his fields and harvest his crops as cheaply as possible. The nationalities imported have been Chinese, Japanese, Koreans, Okinawans,

Samoans, Filipinos, Portuguese, Spaniards and Puerto Ricans.¹⁰ There are even some persons of African or Afro-American descent on the Islands. The more numerous nationalities and their several racial backgrounds have mixed with the Americans of Caucasian ancestry or with the native Hawaiians; they have mixed very well indeed. There is presently little, if any, purely racial strife in the Territory and most of the nationalities and their progeny have made common cause in the interest of higher wages and better working conditions against the plantation owner or operator who is generally a "haole" or of the haole class or group. This has not always been true. See "Hawaii: a History," Kuykendall and Day, Prentice-Hall, Inc., 1948, at p. 275.

A satisfactory definition of the word "haole" is hard to encompass. It was defined by a witness¹¹ in the instant proceedings as generally "a person of mainland America[n] or of northern European stock * * *, not a person [14] of Portuguese, Spanish or Porto Rican descent." The word by simple dictionary definition means "white, foreign."¹²

¹⁰As an example of the wide national mixture we may state that one of the witnesses before this court testified that his nationality was "Chinese, Hawaiian, Samoan and Irish". See transcript p. 109.

¹¹Testimony of Dr. John E Reinecke, Transcript p. 213.

¹²"Introduction to the Hawaiian Language", Judd, Pukui and Stokes, Tongg Publishing Company, Honolulu, Hawaii.

Romanzo Adams, late professor sociology at the University of Hawaii in his book "Interracial Marriage in Hawaii,"¹³ put a gloss on the word which

¹³Published in 1937 by the Macmillan Company, pp. 114-6, 119. Mr. Adams wrote:

"In continental United States the people of the white race take themselves for granted and they classify the others and assign them their place in the social order. They are able to ignore any point of view different from their own. In Hawaii the white people were, for a long time, so few that the Hawaiians, who took themselves for granted, named and placed the other peoples. Of course they had to place (114) the British and Americans near the top, but the name, *haole*, was Hawaiian and it is best understood from the standpoint of Hawaiian experience. It has been necessary, therefore, in Hawaii for white people to see themselves somewhat as Hawaiians see them. They have accepted the Hawaiian designation, *haole*, and, of course, it has affected their conception of their role and their behavior.

"The word, *haole*, in the beginning meant stranger or outsider. It did not, at first, refer to color, but since nearly all of the early strangers were white men it came to be applied in its unmodified form only to white people. . . .

. . . When white men, mainly British and American, came to be somewhat numerous they occupied most of the important professional positions and they were executives and administrators, the owners of property and the initiators of policy. Of course there were many who occupied positions of minor importance, but even they were better paid than others and the way was more open to them for promotion. Thus the word came gradually to stand for a class of superior economic and social status. . . . It is reasonable to assume that the term, *haole*, was, for a long time, more significant of rank than of race. But as Hawaiians and part-Hawaiians in the

we think is correct. Mr. Adams said that the word referred to "rank," [15] rather than to "race." Actually the "haole" group in Hawaii is not far from being co-extensive with the entrepreneur and land-owning, land-controlling group. Specifically,

more recent times have been learning to speak the English language and, with it, taking over other elements of American (115) and European culture, they are more or less coming to think in terms of race.

"It must be emphasized that the term, haole, acquired its meaning from Hawaiian experience and attitudes and that its use has become current among all the other peoples because it stands for something they feel to be unique in the position of this group. As a local classificatory term its meaning is maintained not so much by the haole as by others. When some of the German plantation laborers won a better economic status the decision whether they were to be regarded as haole lay in part with the haole who might or might not give them social recognition, but more largely with the Hawaiians and others who might or might not be willing to treat them as haole." (116)

"Among the European immigrants of the nineteenth century the Portuguese were unique in relation to the status achieved. Coming mainly as plantation laborers they did not as promptly improve their status as did the Germans and Norwegians. The Portuguese were much more numerous. Mainly they were illiterate and for a generation they were indifferent to schooling. In general culture they differed more from the haole than did most of the other European immigrants. Because they were numerous and because their status was a humble one for a long time, there came to be a pretty definite mental set in relation to them. That is, they were regarded as a separate people, the 'Portegees.'" (119).

the "haole" group control the companies for which the individual plaintiffs (except Kawano and Rania) in the instant cases work. The labor relations between the land-controlling and the working groups are tense and have been so for generations. Put simply, the situation is one which call for moderation on both sides. Extreme measures whether undertaken by the employees or by the employers have afforded and will afford no relief. Each group is dependent on the other; both must regard each other's rights and privileges.¹⁴

The history of labor relations in the Territory of Hawaii has not been a happy one. On occasions that history has been bad indeed. It is certain that the 1924 strike of Filipino laborers and its attendant circumstances brought great strain to labor relations in the Territory and caused very substantial damage to them. In the eyes of the plantation owners and operators this strike was unjustifiable. It culminated in a riot at Hanapepe on the Island of Kauai in which four policemen and sixteen Filipinos were killed and a number of other persons wounded. Sixty of the seventy-six participants, who were laborers, were sentenced to prison terms, most, if not all, of them having been indicted under the unlawful assembly and riot act. Two of the defendants were sentenced to four years and eleven

¹⁴For additional material on this vital subject see "An Island Community", Lind, The University of Chicago Press, 1938, Movants' Exhibit No. 4, and "Hawaiian Americans", Burrows, Yale University Press, 1947.

months imprisonment; fifty-eight were sentenced to four years imprisonment and sixteen were acquitted. See *The Hawaiian Annual* for 1925, and the *Honolulu Star-Bulletin*, issues of September 9, 10, 11, 12 and 23, issues of October 10, 27 and issue of November 8, 1924.

An extraordinary feature of the prosecutions was the fact that the territorial government was apparently without funds to conduct them and accepted the support of the [16] Hawaiian Sugar Planters' Association to pay special prosecutors. See the *Honolulu Star-Bulletin* of September 13, 1924. There was in effect an arcing of law enforcement from the regularly constituted territorial authorities to prosecuting attorneys employed, albeit in the name of the Territory, by the planters. The employment of special prosecutors has met with the approval of the Territorial Courts not only in cases involving labor disputes but in other criminal cases as well. It is an undesirable custom of long standing whereby on occasion the administration of public justice has in effect been brought into the hands of the private property owner. It has occurred most frequently, perhaps, in criminal cases growing out of such labor disputes as the Hanapepe incident. See *Territory v. Soga*, 20 Haw. 71. As to cases not involving labor disputes see *Territory v. Robello*, 20 Haw. 7, and *Territory v. Chong Chak Lai*, 19 Haw. 437.

The facts stated in the foregoing paragraphs are notorious and we take judicial notice of them since

they occurred within this jurisdiction. Contemporaneous accounts may be employed by the court on analogy to refreshing recollection. See *Brown v. Piper*, 91 U. S. 37, 42. It is interesting to note the Territorial law on this subject. See *The Estate of His Majesty Kamehameha IV*, 2 Haw. 715, 718, and *Bishop v. Mahiko*, 35 Haw. 608, 618-624. We think that the Filipino workers' strike and its attendant circumstances resulted in the amendment to Section 4351 of the Revised Laws of Hawaii 1925, effected by the Act of March 15, 1929 (Laws of the Territory of Hawaii, Regular Session 1929, Act 4, p. 3) whereby the term of imprisonment which could be imposed for violation of the unlawful assembly and riot act of Hawaii was raised from five years to twenty years and we so find. The sentences of the convicted strikers had expired just as the Legislature convened in 1929 and there was evident fear that when these men returned to their people on Kauai some form of demonstration or labor trouble might result. The unlawful assembly [17] and riot act of the Territory of Hawaii is discussed at length under a later heading of this opinion.

The Incidents Which Led to the Instant Suits

The complaints and the indictments referred to in the pleadings and evidence in the cases at bar grow out of a number of occurrences, some involving a measure of violence, which arose in turn from strikes in the sugar and pineapple industries. The first occurrence, upon which the defendants in the cases at bar lay considerable emphasis, took place

at Paia on the Island of Maui and is referred to by common agreement as the "Paia incident." Others took place on the Island of Lanai (part of Maui County), one at the Kaumalapau harbor and wharf, the loading place for Lanai City, another occurring at or near Lanai City itself. These are generally described as the "Lanai incidents." There were other occurrences (some on the Island of Oahu) germane to the issues of the law presented by the instant cases and certain of these will be discussed hereinafter. A strike of the sugar workers in the Territory of Hawaii commenced on September 1 and lasted until November 19, 1946.¹⁵ This strike in effect was won by the union. A strike of the pineapple workers of the Territory commenced on July 10 and continued to and including July 15, 1947. This strike was lost by the union primarily because of the enforcement of the unlawful assembly and riot act.

The Paia Incident

We will deal first with the Paia incident which occurred on October 16, 1946 while the sugar workers' strike was in progress. Maui Agricultural Company is a sugar company having its mill at Paia on the Island of Maui, Maui County. A public

¹⁵Except at the Pioneer Mill Company, Lahaina, where the sugar workers' strike continued until January 2, 1947. It is asserted that the strike continued until the day last mentioned because of the refusal of the company to reinstate certain strikers. The point is immaterial in the decision of the litigations.

highway known as Baldwin Avenue lies between the company's office and its mill. Prior to [18] October 16, 1946 there had been extensive picketing of the company's mill with but little, if any, police interference. The hour set for the commencement of mill operations on the day the incident occurred was 7:00 A.M. Before the mill whistle blew, five persons, long-time residents of Maui and union men who had gone out on strike, appeared on the scene, desiring to return to work. One of them, Moniz, on the previous day had requested of Captain Long of the Paia police detail protection in getting through the pickets to go to work. After receiving this request Long had followed Moniz across the street to the picket line in front of the mill but the pickets stood shoulder to shoulder and would not let Moniz through though requested to do so both by him and by Long. Moniz then said that he was coming back "to go to work tomorrow."

Long reported this matter to Assistant Chief of Police Andrew Freitas and on the following day, the 16th, Freitas went to the scene with additional men of the regular police force from the Wailuku District. When the police arrived "orderly picketing"¹⁶ was going on. There was a line on the mill side of the street in double column. A few minutes after 6:45 A. M. the line at the mill entrance was increased to four columns, the number of pickets being between three and four hundred. After certain preliminary conversations between members

¹⁶So described in the defendants' brief.

of the ILWU, Kealoha,¹⁷ Joseph Kaholokula,¹⁸ and others, respecting the entry of the five workmen to the mill it was stated by Kaholokula that if the five men tried to cross the picket line, "police or no police", there would be violence and bloodshed.

When the mill whistle blew the five men started across the street toward the mill entrance escorted by the police. Nelson Souza, one of the men seeking admittance, was ahead with Captain Long beside him. About two hundred of the pickets left the picket line and converged, blocking the road and the mill entrance. Souza tried to get through the line at the point where Awana¹⁹ was but the latter braced himself and the mass of union men, without using their hands, pushed the group seeking entrance to the mill back about five feet. At this point both Freitas and Kaholokula called out that the men should stop the fracas, be quiet and listen. Freitas then read to the crowd Section 11773 of the Revised Laws of Hawaii 1945,²⁰ which provides a

¹⁷Kealoha was not an employee of the Maui Agricultural Company. He had come to Paia the previous day from Honolulu. He was, apparently, a kind of special agent of the ILWU.

¹⁸Whose first cousin, William Kaholokula, was one of the five men who sought admittance.

¹⁹One of the plaintiffs at No. 836 and subsequently a defendant in proceedings in the Circuit Court of Maui County, Second Circuit, as will appear in this opinion.

²⁰Section 11773 is as follows: "Any person who shall loiter, or loaf, or idle upon any public highway, street, or sidewalk, thereby impeding or ren-

rather substantial penalty for "Loitering." Thereafter, a second attempt was made by the five men and the police to get through the line of union men

dering dangerous the passagQe of pedestrians or others lawfully using the public highway, street or sidewalk, or thereby in any way imperiling the public welfare or thereby tending in any way to cause a breach of the peace, is guilty of a petty misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$25 nor more than \$250 or imprisoned for not less than thirty days nor more than ninety days or by both fine and imprisonment."

The statute is very similar in tenor to that (Laws of the Territory of Hawaii, 1929, Act 256, Section 1, p. 351) held unconstitutional in *Territory of Hawaii v. Anduha*, 9 Cir., 48 F. 2d 171. The Act of May 8, 1929 provided in pertinent part, "Any person who shall habitually loaf, loiter and/or idle upon any public street or highway or in any public place, shall be guilty of a misdemeanor, and upon conviction thereof be punished by a fine of not more than \$100 or by imprisonment for not more than one year or by both such fine or imprisonment."

There is a conflict in the testimony as to whether Freitas read Section 11773, the so-called "Loitering" law, or whether he read Sections 11574-11584 of the Revised Laws of Hawaii 1945, or perhaps only Section 11570 thereof, dealing with "Riots and Unlawful Assemblies", the unlawful assembly and riot act of the Territory of Hawaii. Freitas testified that he read Section 11773, the "Loitering" act; Awana testified that Freitas read from the unlawful assembly and riot act and the trespass statute, Section 11751. Counsel for the plaintiffs contend that Section 11771, dealing with vagrants, beggars, nickpockets, etc., was also read and it is pointed out that the "Loitering" law was not included in a small mimeographed copy of certain laws prepared by the police apparently in view of the strike situation. We find that Freitas named correctly the section which he read.

and into the mill. Awana, who previously had kept his arms on his breast, this time stretched them out to enlarge the barrier. No blows were struck but the group of five workmen and the police were pushed ten to twelve feet back across the avenue. Freitas asked the five workmen if they desired to try to get into the mill again and they replied that they did not wish to make a third attempt. Freitas then informed the union men that the attempt to put the five workmen into the mill was over, and he and Kaholokula had breakfast together and in fact exchanged congratulations that the incident had come to an end without physical injury to anyone.

After this occurrence picketing continued at Paia until the issuance by the Circuit Court of the Second Circuit of an *ex parte* temporary injunction in *Maui Agricultural Company, Limited v. International Longshoremen's and Warehousemen's Union, et al.*, Equity No. 325, limiting even peaceful picketing to three persons, the court stating in its opinion that picketing should be so restricted because of the territorial statute relating to unlawful assembly. See pp. 91-2 of the transcript of record in the appeal in the case of *International Longshoremen's Union v. Wirtz*,*

F. 2d, in the United States Court of Appeals for the Ninth Circuit. Logically, under the provisions of the statute as they will appear hereinafter, Judge

*No. 11568, decided September 29, 1948.

Wirtz should have restricted picketing to two persons, not three. An application was made to the Supreme Court of the Territory for a writ of prohibition to issue against Judge Wirtz of the Circuit Court of the Second Circuit of the Territory of Hawaii to compel him to vacate the injunction. In *L. L. W. U., et al. v. Wirtz, et al.*, 37 Haw. 94, rehearing denied, *Id.* at p. 445,²¹ the Supreme Court of Hawaii, holding that the Norris-LaGuardia Act, 29 U. S. C. A. Sections 107-115, was not applicable to the territorial courts of Hawaii, refused to issue a writ of prohibition against Judge Wirtz to compel him to vacate the ex parte injunction restricting picketing previously referred to. The decision of the Supreme Court of Hawaii was affirmed, as we have said, by the Court of Appeals for the Ninth Circuit. It should be noted that Judge Wirtz' decision constitutes an important contemporaneous construction of the application of the unlawful assembly and riot act.

Following the Puna incident a complaint was sworn out before a district magistrate and subsequently seventy-eight members of the ILWU were arrested. The complaint is not in the record before

²¹The case of *Mau Agricultural Company, Limited, v. International Lumbermen's and Warehousemen's Union et al.*, Equity No. 324, in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, did not go beyond the temporary injunction stage because of the application for writ of prohibition referred to in the text and because the case became moot at the termination of the strike.

us but there is evidence from which we find that it was based on the unlawful assembly and riot act. Later an indictment²² charging seventy-eight persons²³ with violation of the unlawful assembly and riot act was returned by the 1946 grand jury of the Second Judicial Circuit of the Territory of Hawaii (Maui County) on October 30, 1946. Of these persons, at least seventy-five were members of the ILWU. Seventy-five of these defendants are plaintiffs at our No. 836.

Benjamin Awana, one of the plaintiffs at No. 836, testified that to his knowledge four persons who were named as defendants in the 1946 indictment were not present at the time the incident occurred. He named these four as (Doris) Tomita, Hitoshi Sera, Johnny Nishimura and Frank Matsui. His testimony in this regard is substantiated in part by the fact that three of the four individuals whom he named, viz., Tomita, Nishimura and Matsui, were not included in the subsequent indictment of December 2, 1947 returned by the Maui County grand jury.²⁴ We find as a fact that the three individuals

²²Plaintiffs' Exhibit No. 9, Indictment of October 30, 1946, returned by the 1946 Maui County grand jury.

²³One man named as a defendant in the indictment, Jose Pias, was dead on October 16, 1946.

²⁴For the sake of clarity we state that Plaintiffs' Exhibit No. 9 referred to in the opinion is the indictment returned on October 30, 1946 by the Maui County grand jury, viz., the grand jury of the Second Judicial Circuit of the Territory of Hawaii. The indictment of December 2, 1947 at Criminal No.

last named were not present during the occurrence of the Paia incident. But it is to be noted that Tomita, Nishimura and Matsui were under indictment, charged with violation of the unlawful assembly and riot act for more than a year before the Supreme Court of Hawaii held the indictment to be invalid for reasons stated hereinafter. See *Territory of Hawaii v. Kaholokula, et al.*, 37 Haw. 625. See also the facts relating to the finding of the indictment of December 2, 1947 under the next heading of this opinion. Roy Yasunaga, who also was named in the first indictment, was omitted in the second. No reason for the omission is supplied by the record. It is probable that he also, though arrested because of the Paia incident, took no part therein.

The facts last stated are of importance because of the very wide net which the police and prosecuting officers of Maui County threw about the workers who were on strike. This point will be amplified when the first Lanai incident is discussed. The arrests following both the Paia incident and the first Lanai incident were in fact made in mass.

It is desirable to point out here that Freitas and the other police officers had no intention of invoking

2365 was returned by the 1947 grand jury of the Second Judicial Circuit (Maui County) of the Territory of Hawaii. This is Exhibit E to the complaint at No. 836. Exhibit No. 9 incorrectly bears a stamped number "2365". The indictment returned on December 2, 1947 by the Maui County 1947 grand jury (Exhibit E to the complaint at No. 836) is actually No. "2365".

prosecution of the strikers under the unlawful assembly and riot statute of the Territory at the time of the happening of the Paia incident or until they had conferred with Deputy County Attorney Wendell F. Crockett of Maui County to determine the form which the complaint should take. We find Assistant Chief of Police Freitas to be a most credible witness and we accept his testimony with but one minor exception as indicated in note 25, *infra*. He stated that in Maui County complaints are prepared by the police and are taken to the County Attorney's office for perusal. Freitas stated that Mr. Crockett instructed him to make up the complaint in question "to read unlawful assembly". While we recognize the duty of a prosecuting officer to determine the form and the substance of a complaint, the invocation of the unlawful assembly and riot statute possesses unusual significance when viewed in the light of other pertinent circumstances of the cases at bar.²⁵ [23]

Facts Relating to the Testing of the Constitutionality of the Unlawful Assembly and Riot Statute by Kaholokula and Others.

The defendants named in the indictment of October 30, 1946, Joseph Kaholokula, et al., contested

²⁵It should be pointed out that prior to the occurrence of the Paia incident there had been but few (probably but four) arrests arising in connection with the sugar workers' strike. All had been made at Lahaina for minor offenses. One was for assault and battery when a member of the union struck a supervisor. The second arrest was for

the validity of the unlawful assembly and riot act and the sufficiency of the indictment in the Circuit Court of the Second Circuit. When these issues were decided unfavorably to them in that court they took an appeal to the Supreme Court of Hawaii. This appeal was possible by virtue of Section 9531, Revised Laws of Hawaii 1945, which provides for an appeal of an interlocutory order of a nisi prius court. The Supreme Court on November 26, 1947 held the statute to be constitutional but ruled also that the indictment was insufficient in that it contained no allegations of "the acts done or actually begun to be done in furtherance of the unlawful assembly." See *Territory of Hawaii v. Kaholokula, et al.*, *supra*, 37 Haw. at p. 642. It should be noted that the Supreme Court of Hawaii held also that a riot is an offense under the act though no order to disperse, by proclamation or otherwise, has been given or made. See *Id.* at pp. 638-9. Kaholokula and all of his co-defendants in the indictment of

malicious injury when a union man was accused of closing an irrigation ditch. The last two arrests were made when two union members were charged with pulling the ignition wires from the distributor of a supervisor's automobile.

See transcript in the cases at bar, pp. 363-4. Cf. p. 116 and pp. 131-2. Freitas' testimony at pp. 363-4 respecting the arrest of MacMasato Yamauchi seems to have been in error. See the indictments, Plaintiffs' Exhibit No. 6, which charge Yamauchi with offenses which took place on November 6, 1946. See also Plaintiffs' Exhibit No. 31, Freitas' examination of Yamauchi which recites the same date. The Yamauchi incident is discussed at a later point in this opinion.

October 30, 1946, except Pias, deceased, and four others, Matsui, Nishimura, Dondo Tomita and Yasunaga, were reindicted by the 1947 grand jury of the Circuit Court of the Second Circuit, at No. 2365, for breach of the unlawful assembly and riot statute in count 1, and for conspiracy to commit a felony, third degree, in count 2. Masao Sera was also named in the second indictment. It should be noted that there had been no remittitur by the Supreme Court to the Circuit Court in the Kaholokula case referred to before Kaholokula, his former co-defendants and one additional defendant, were indicted by the 1947 Maui County grand jury for offenses growing out of the Paia incident. These facts must be referred to again at a later point of this opinion. The prosecution of Kaholokula and his co-defendants under the new indictment has not been proceeded with because of the temporary restraint issued by this court at No. 836.

The Yamauchi Incident.

Mac Masato Yamauchi, a carpenter employed at the Pioneer Mill Company, Ltd. at Lahaina, was also charged with violation of the unlawful assembly and riot statute. See the two complaints against Yamauchi and others, Plaintiffs' Exhibit 5. Yamauchi's actions were a contributing, if not the primary, cause of an assault and battery upon certain other employees of Pioneer who were set upon by a large number of other strikers in order to prevent further irrigation from an irrigation ditch. The complaint states that the offenses occurred on November 6, 1946. Yamauchi and those who alleg-

edly acted under his orders were named by the 1946 Maui County grand jury in two indictments returned on December 12, 1946. The first indictment, numbered 2379, Plaintiffs' Exhibit No. 6, contained three counts, "Riot", "Conspiracy-Third Degree" and "Assault and Battery". The second indictment, numbered 2380 but also designated as Plaintiffs' Exhibit No. 6, contained similar counts. Yamauchi pleaded *nolle contendere* to the assault and battery charges, and the other charges, riot and conspiracy, were *nolle prossed*.

The Lanai Incidents.

While the Kaholokula case was pending in the Supreme Court of Hawaii there occurred the incidents on the Island of Lanai referred to in the complaint at our No. 828. The individual plaintiffs at No. 828, other than Kawano, were employed by the Hawaiian Pineapple Company at or near Lanai City, Maui County, at the times when the incidents occurred. We will deal immediately with that Lanai incident which occurred first.

The Hawaiian Pineapple Company owns the Island of Lanai. The Island is entirely populated by employees of the company and their families, totaling about 4000 persons. See "Hawaii", p. 11, published by the United States Department of the Interior, *supra*. The company maintains a wharf at Kaunapau Harbor about seven miles distant from Lanai City to the end that the pineapples harvested on its plantations in and about Lanai City may be shipped to market. Pineapples are brought from the fields in specially constructed bins ready to be

loaded on a pineapple barge when one is brought to dock. On the day of the incident, July 14, 1947, about eleven²⁶ bins of pineapples, picked before the strike on the plantations of the Hawaiian Pineapple Company and brought to Kaunapali Harbor, lay on the dock. The company intended to transship them to a barge which was about to be brought into the harbor. A white line, a kapu²⁷ line, had been painted on the land side of the road to designate the outer boundary of the company's property.²⁸ Kapu signs were posted along this line. About 3:00 P. M. there were fifteen or sixteen men near the wharf, sitting on the sea wall. About 3:30 P. M. truck loads of union men began to arrive at the wharf until there were about three hundred present. There was some picketing. About 4:00 P.M. the expected barge came in and was secured to the wharf. The picketing which had ceased temporarily began again headed by five union "picket policemen", one of whom was Diego Barbosa.²⁹ While this was going on employees of the company, who ordinarily

²⁶It should be noted that the customary load for a barge is 152 bins of pineapples which are usually shipped for canning within forty-eight hours after picking lest they turn sour.

²⁷The Hawaiian word kapu means "forbidden". See "Introduction to the Hawaiian Language". See note 12, *supra*.

²⁸See Defendants' Exhibits C-1, 2 and 5.

²⁹Sometimes referred to in the testimony as "Gigo". See for example p. 40 of the testimony before Young Wa, Acting Magistrate, designated in note 34, *infra*, as the "Lanai transcript."

worked in supervisory capacities and who were non-union men, began to take positions on and about the bins, obviously with the intention of loading the pineapples on the barge. Among these employees were Harrington and Johnson. Another supervisory employee, Fernandes, started to operate the crane.

Barbosa ran toward the pineapple bins and across the kapu line, signaling for the other men to follow him. All the men, as they crossed the kapu line, according to Freitas' testimony, yelled at the tops of their voices. Some of them mounted the bin on which Johnson and Harrington were working. Johnson escaped without injury but Harrington was punched and beaten about the head and body as was demonstrated by the motion picture film shown to this court.³⁰ The men who mounted the bins, broke them open and threw pineapples at the men on the tug and the barge. The supervisor, Fernandes, who had started to operate the crane, ran away pursued by at least fifteen men who punched at him. He was chased down a stairway to a lower portion of the wharf where he fell or jumped into the water. As he swam away his attackers threw pineapples at him, though none of these actually struck him. Another non-union employee, Charles Marquis,³¹ was also forced into the water but reached the protection of the barge. Freitas had only five police officers with him. He told Barbosa to call off his men, saying that the work would stop. Barbosa called the

³⁰Defendants' Exhibit E-1.

³¹Referred to in the transcript before this court as "Makees". See p. 355.

men back to the sea wall or road. The incident lasted about five minutes, the barge then leaving the pier.

Motion pictures were taken at the wharf by a police officer, by an engineer and draftsman employed by the Hawaiian Pineapple Company, and by a school principal. Stills were printed in Honolulu from the motion picture negatives. Some arrests for participation in the incident were made on the basis of reports by the police officers who were present and eleven persons, including Barbosa, were named in a criminal complaint, dated July 16, 1947, based on the unlawful assembly and riot act.³² On August 1, 1947, about two weeks after the incident, a complaint was filed against Agliam and fifty-one additional defendants.³³ This complaint also was based on the unlawful assembly and riot Act³⁴ and will be referred to hereinafter from time to time as the Agliam case. Before the preliminary hearing in

³²See Exhibit D attached to the complaint at our No. 828.

³³See item 5, par. 7, stipulation 4/23/48 at our No. 828.

³⁴See the complaint attached to the record of the proceedings before Young Wa, acting District Magistrate of the District of Lanai "On the Preliminary Hearing had by the Plaintiffs Agliam and Others . . .", admitted pursuant to the stipulation at No. 828, paragraph 7 (item 5) and paragraphs 8 and 9. We refer to this transcript as the "Lanai transcript".

the District Court³⁵ four persons were dropped³⁶ and after the preliminary hearing, the names of twelve more defendants were removed from the Agliam complaint.³⁷ The remaining thirty-six were held for action of the Maui County grand jury. The grand jury has not yet acted in respect to the case of Barbosa, et al., due to the restraining order issued by this court at No. 828, or in respect to the case of Agliam, et al.

Assistant Chief of Police Freitas testified on cross-examination in this court that a number of pictures were taken at the harbor both before and after the incident as well as during it. He was asked, "Isn't it true that a large number of pictures were taken after everything was pau [finished]"? He replied, "Yes, there were pictures taken afterwards." We find it to be a fact that a number of persons came to the scene presumably out of curiosity after the incident was over. Freitas testified that "all these pictures" were used in compiling the list of names in the complaint sworn to by him before the magistrate. [28] One individual, Aki, was present during the incident but took no part in it.

³⁵The District Court on occasion is a committing magistrate's court wherein defendants may be held for the Circuit Court. See Sections 9671-9688, Revised Laws of Hawaii 1945. The Circuit Court is the nisi prius or trial court which must sit with a jury in criminal cases unless a jury be waived. See Sections 9631-9657 and Section 10, 825, Revised Laws of Hawaii 1945.

³⁶See Lanai transcript, 8/6/47, p. 1.

³⁷Lanai transcript, 8/28/47, p. 126.

He was arrested nonetheless. He was not a member of the ILWU at the time. A police officer, Lieutenant Madeiros, told Aki that he was surprised that he was arrested at all as he was not a union man. Aki was quickly discharged from custody.

It will be observed that sixty-three persons were subjected to criminal process by reason of the Lanai incident and that only forty-seven of them were finally held for action of a grand jury. Again the law enforcement officers of Maui County threw a very wide net.³⁸ The Deputy County Attorney for Maui County as before instructed Freitas to cause the complaints to charge violations of the unlawful assembly and riot act.

Barbosa and the others named in the complaint, Exhibit D attached to the complaint at our No. 828, filed certain motions and challenges to the 1947 Maui County grand jury.³⁹ This matter must be referred to again at a later point in this opinion.

³⁸As to persons wrongfully arrested the case of Shigeto Minami may perhaps be deemed to be typical. Minami, who was working for the research department of the Hawaiian Pineapple Company, and was not a member of the union, albeit he ceased work on July 10, 1947 when the union men struck, went to Kaunapali Harbor from Lanai City to go swimming with some friends on the day of the incident, remaining there only until about one o'clock in the afternoon, leaving about three hours before the incident started. He seems to have been photographed by the police, was subsequently arrested under the complaint alleging unlawful assembly and riot and was compelled to make bail in the amount of \$100. After approximately five appearances before a magistrate he was discharged.

³⁹See par 10, stipulation, 4/23/48, at our No. 828.

The Kalua Incident at Lanai City

The second incident on the Island of Lanai⁴⁰ occurred early in the morning of July 15, 1947. Its victims were Jacob Kalua Nahinu and Sam Kalua.⁴¹ Both roomed in House No. 7 in Block 33, Lanai City, and were truck drivers [29] employed by the Hawaiian Pineapple Company. Neither had gone out on strike. Shortly after 5:30 a.m. twenty to twenty-five persons, most of whom must be assumed to have been strikers since they were headed by "union police" with arm bands, proceeded to administer a severe beating to Jacob and when his brother, Sam, attempted to rescue him, he too was beaten.⁴² Jacob was caught between the house and the communal washroom. The Kalua brothers were able to identify only five persons who were arrested on a complaint made the same day. The persons arrested were Abraham Makekau⁴³ and four others. They were committed to await action of the grand jury. This complaint⁴⁴ also was based upon the un-

⁴⁰The Island of Lanai lies off the larger Island of Maui and, as already stated, is included in Maui County.

⁴¹These two men are brothers albeit they possess different surnames. They will be referred to from time to time in this opinion as the "Kalua brothers."

⁴²See the pictures taken of Jacob following the beating. Defendants' Exhibit I, 1 and 2.

⁴³See Makekau's statement made before Assistant Chief of Police Freitas on July 15, 1947, Defendants' Exhibit N.

⁴⁴Attached to the amendments to the challenges and motions to the Maui County grand jury, as Exhibit G at our No. 828.

lawful assembly and riot act. The prosecution of Makekau and his co-defendants has not been proceeded with by reason of the restraint issued by this court at No. 828.

Makekau and his co-defendants joined with Barbosa and his co-defendants in filing the motions and challenges to the 1947 Maui County grand jury as mentioned in the last paragraph of the preceding sub-heading.

Incidents Occurring in and About the City and County of Honolulu During the Pineapple Workers' Strike

There was testimony that one Sibolboro and seven others were arrested for obstructing a highway in the City and County of Honolulu on July 13, 1947. Sibolboro lay down in front of a truck, preventing it from proceeding on the highway. He was sentenced to six months' imprisonment but sentence was suspended. Eighty-three other persons were also arrested as the result of another incident in the County of Honolulu on the same Sunday and charged [30] with obstructing a highway at Turner's Switch. These charges were later nolle prossed.⁴⁵

Excessive Bail

In numerous instances the bail required of the defendants, plaintiffs herein, in criminal proceed-

⁴⁵The defendants objected to the testimony referred to under this heading and, after it was presented, moved to strike it out. We will deny the motion to strike since we deem the evidence to be pertinent.

ings growing out of the strikes, seems to us to have been so large as to be excessive. Pedro De La Cruz testified that he was president of Local 152 and had the duty of making bail with union funds for union members charged with the violations of law hereinbefore referred to in this opinion. He testified that Makekau and the four others arrested with him and charged with unlawful assembly and riot were required to make bail in the amount of \$1,000 apiece;⁴⁶ that Diego Barbosa and one of the ten other persons arrested with him for violation of the unlawful assembly and riot act were required to give bail in the amount of \$1,000 apiece; three of them were granted bail in the amount of \$500 apiece; and the remaining defendants were granted bail in the amount of \$250 apiece.⁴⁷ It should be noted that Shigeto Minami, who had nothing to do with the Kanaulapau Harbor incident, save his appearance at the scene perhaps three hours before the incident occurred, was held in bail of \$100, though released after subsequent hearings.⁴⁸

Even in the Makekau case, growing out of the assaults on the brothers Kalua, bail set in the amount of \$1,000 a defendant seems too high. The requirement of bail in such an amount for an assault and battery would seem to be unusual even on the eastern and western seaboard of the United States. There is but little chance for a defendant

⁴⁶See transcript before this court at p. 138.

⁴⁷*Id.* pp. 139-140, 145-146.

⁴⁸*Id.* at p. 52. See note 38, *supra*.

under bail to escape from the Territory of Hawaii or even from Maui County by reason of geographical isolation. [31]

The Use of the Unlawful Assembly and Riot Statute

It will be observed that the unlawful assembly and riot statute has been extensively, and indeed almost continuously, invoked by the law enforcement officers of Maui County against members of the ILWU during the course of the sugar and pineapple strikes; indeed, on occasions and under circumstances, for example those in connection with the Kalua brothers and the Yamauchi incidents, when the invocation of the statute seems inappropriate. The record demonstrates a leaning on the part of the law enforcement authorities of Maui County toward the use of the unlawful assembly and riot act when a statute like the assault and battery act, Chapter 239, Sections 11050-60, Revised Laws of Hawaii 1945, would, we think, have been employed if the motive for prosecution had been only the maintenance of good order in the community and the punishment of minor law breakers. Certainly, the penalty provisions of Chapter 239 must be deemed to be adequate for those purposes.

Wendell F. Crockett, Esquire, the Deputy County Attorney of Maui County and a defendant at both Nos. 828 and 836, testified before this court. We found him to be a most credible and intelligent witness. He was asked⁴⁹ by the attorney for the plain-

⁴⁹Transcript at pp. 282-3.

tiffs, "In your experience of thirty years as deputy county attorney for the County of Maui, have you ever prosecuted any person for unlawful assembly and riot except as it grew out of a labor dispute?" He replied: "To my recollection except for the present cases, there was only one case prosecuted in the County of Maui for unlawful assembly, and that grew out of an alleged kidnapping that took place during a labor dispute." We have found but one reported case in which the unlawful assembly and riot act was invoked in a case which did not involve a labor dispute. This is *Republic of Hawaii v. Carvalho*, 10 Haw. 446, which involved a riot among Portuguese members of the island community. This case, as indicated, was [32] prior to annexation and occurred during the life of the Republic of Hawaii.

No evidence was offered by the defendants to rebut Mr. Crockett's testimony on this very important point. Since one of the major issues in the instant cases is the good faith of the prosecutions instituted against the individual plaintiffs by the Territory under the unlawful assembly and riot act, had rebutting testimony been available, assuredly it would have been brought forward by the able attorneys for the defendants; evidence, not only as to the unlawful assembly and riot act being employed against groups other than labor groups in Maui County but in any other part of the Territory of Hawaii as well. In the absence of such rebutting testimony we are entitled to find and we do find, that the unlawful assembly and riot act has been employed by the Territory only against labor

groups, in labor disputes, at least for the last three decades.

Mr. Crockett testified also that he would proceed with the prosecutions of the plaintiffs as soon as circumstances would enable him to do so.

THE LAW, SAVE THAT RELATING TO THE
MOTIONS AND CHALLENGES TO THE
JURY COMMISSIONERS AND GRAND
JURIES OF MAUI COUNTY

The challenges to the grand jury commissioners and to the grand juries of Maui County, as we have said, will be treated under a later heading since these subjects are separated to a considerable degree from the facts and the law relating to the incidents hereinbefore referred to and to the unlawful assembly and riot act and the conspiracy statute of the Territory. We will deal first with our authority to sit as a three-judge court pursuant to the authority of revised Title 28, and then with the attacks on the constitutionality of the two territorial statutes last referred to. [33]

As to Our Authority to Sit as a Court of Three
Judges Under Section 2281 of Revised Title 28,
U. S. Code, or as a Court of Three Judges
Sitting En Banc

We state in limine that we are of the opinion that the provisions of revised Title 28, U. S. Code, effective September 1, 1948, are applicable in the cases at bar. See Section 38 of the Act of June 25, 1948, c. 646, Section 1 of which enacted revised Title 28. While it is true that the provisions of the revised

Title were not in effect at the time the suits at bar were filed or when they were heard, we deem this fact to be immaterial. It is important only that the provisions of revised Title 28 are in force at the time of our decision. We have functioned as a three-judge revised Title 28, Section 2281 court in adjudicating the issues presented by the pleadings and the evidence in the instant cases. Congress by enactment of revised Title 28 saw fit to change the status of the United States District Court for Hawaii while the present litigations were pending by enacting revised Title 28, Sections 451, 133 and 134 (a). The parties, however, cannot complain respecting the new enactment which changed the status of this court since they do not suffer “. . . loss of rights, interruption of jurisdiction, or prejudice . . .” in the pending matters. See Section 2 (b) of the Act of June 25, 1948, c. 646.

The parties in fact do not make any complaint respecting the changed status of this court, though their arguments, both written and oral, in large part have been based upon the provisions of the Judicial Code of 1911. We can function only pursuant to the powers conferred upon us by Congress and therefore we must decide the pending cases under the provisions of revised Title 28 if we are to make the decisions. A helpful analogy is supplied, we think, by those authorities which hold that procedural amendments are to be applied to pending cases. See *Schoen v. Mountain Producers Corporation*,* 3 Cir. F. 2nd ; *McCullough v. [34] Vir-*

*No. 9651 decided November 9, 1948.

ginia, 172 U. S. 102; *State of Pennsylvania v. Wheeling and Belmont Bridge Co.*, 59 U. S. 421, and *Hodges v. Snyder*, 261 U. S. 600. Cf. *Hallowell v. Commons*, 239 U. S. 506; *Railroad Co. v. Grant*, 98 U. S. 398, 401-402; *Fed. Res. Bank of Richmond v. Kalin*, 4 Cir., 77 F. 2d 50, 51-2; and *Link v. Rec'rs of Seaboard Ry. Co.*, 4 Cir., 73 F. 2d 149, 151. We can find no authority strictly in point.

The critical language of Section 2281 of revised Title 28,⁵⁰ states that no interlocutory injunction or final order restraining [36] the enforcement "of any

⁵⁰As follows:

"Section 2281. An interlocutory or permanent injunction restraining the enforcement, operation or execution of any State statute by restraining the action of any officer of such State in the enforcement or execution of such statute or of an order made by an administrative board or commission acting under State statutes, shall not be granted by any district court or judge thereof upon the ground of the unconstitutionality of such statute unless the application therefor is heard and determined by a district court of three judges under section 2284 of this title."

See also Section 2283 as follows:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment."

See also Section 2284 as follows:

"In any action or proceeding required by Act of Congress to be heard and determined by a district court of three judges the composition and procedure of the court, except as otherwise provided by law, shall be as follows:

"(1) The district judge to whom the application for injunction or other relief is presented shall con-

State statute" by "any officer of such State" shall be granted except "by a district court of three

stitute one member of such court. On the filing of the application, he shall immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. Such judges shall serve as members of the court to hear and determine the action or proceeding.

"(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of the hearing shall be given to the governor and attorney general of the State.

"If the action involves the enforcement, operation or execution of an Act of Congress or an order of any department or agency of the United States, at least five days' notice of the hearing shall be given to the Attorney General of the United States, to the United States attorney for the district, and to such other persons as may be defendants.

"Such notice shall be given by registered mail by the clerk, and shall be complete on the mailing thereof.

"(3) In any such case in which the application for an interlocutory injunction is made, the district judge to whom the application is made may, at any time, grant a temporary restraining order to prevent irreparable damage. The order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the full court. It shall contain a specific finding, based upon evidence submitted to such judge and identified by reference thereto, that specified irreparable damage will result if the order is not granted.

"(4) In any such case the application shall be given precedence and assigned for a hearing at the earliest practicable day. Two judges must concur in granting the application.

judges" as provided by Section 2264. Cf. the provisions of Section 266 of the old Judicial Code.⁵¹ It

"(5) Any one of the three judges of the court may perform all functions, conduct all proceedings except the trial, and enter all orders required or permitted by the rules of civil procedure. A single judge shall not appoint a master or order a reference, or hear and determine any application for an interlocutory injunction or enter a summary or final judgment. The action of a single judge shall be reviewable by the full court at any time before final hearing.

"A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days' notice served upon the attorney general of the State."

⁵¹As follows:

"No interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute, or in the enforcement or execution of an order made by an administrative board or commission acting under and pursuant to the statutes of such State, shall be issued or granted by any justice of the Supreme Court, or by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the

will be observed therefore that there are two barriers which must be cleared before the jurisdiction

United States, or to a circuit or district judge, and shall be heard and determined by three judges of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: Provided, however, That one of such three judges shall be a justice of the Supreme Court or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney general of the State, and to such other persons as may be defendants in the suit; Provided, That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall remain in force only until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case. It is further provided that if before the final hearing of such application a suit

of this court, sitting as a three-judge Section 2281 tribunal, becomes plain. The first is in the use of the word "State" in Section 2281 and in Sections 2283 and 2284. May it be said that the unlawful assembly and riot act and the conspiracy statute of the Territory of Hawaii are statutes of a "State"⁵² or "State statutes" within the purview of the sections? The second barrier lies in the nature of the United States District Court for the District of Hawaii. Is it "a district court" within the applicable language of the statute?

We will discuss the second question first and are aided in determining it by additional pertinent sec-

shall have been brought in a court of the State having jurisdiction thereof under the laws of such State, to enforce such statute or order, accompanied by a stay in such State court of proceedings under such statute or order pending the determination of such suit by such State court, all proceedings in any court of the United States to restrain the execution of such statute or order shall be stayed pending the final determination of such suit in the courts of the State. Such stay may be vacated upon proof made after hearing, and notice of ten days served upon the attorney general of the State, that the suit in the State courts is not being prosecuted with diligence and good faith. The requirement respecting the presence of three judges shall also apply to the final hearing in such suit in the district court; and a direct appeal to the Supreme Court may be taken from a final decree granting or denying a permanent injunction in such suit."

⁵²See the position taken in respect to this word in the dissenting opinion of Chief Judge Denman in *Mo Hock Ke Lok Po v. Stainback*, 74 F. Supp. 852, at pp. 861 et seq.

tions of revised Title 28. Section 451 provides, "As used in this title, the term 'court of the United States' includes the Supreme Court of the United States, . . . [and] district courts constituted by chapter 5 of this title, including the district courts of the United States for the districts of Hawaii and Puerto Rico . . ."; "The terms 'district court' and 'district court of the United States' mean the courts constituted by chapter 5 of this title"; and "The terms 'district' and 'judicial district' mean the districts enumerated in chapter 5 of this title." Turning to Chapter 5, Section 91, we find that the statute provides, "Hawaii [37] constitutes one judicial district which includes the Midway Islands, Wake Island . . ." Section 132 provides for the creation and composition of district courts and states, *inter alia*, that "There shall be in each judicial district a district court which shall be a court of record known as the United States District Court for the district." See sub-paragraph (a). Section 133 states that "The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows: . . . Hawaii . . . 2 . . . [and that only] citizens of the Territory of Hawaii who have resided therein for at least three years next preceding shall be eligible for appointment as district judges for the district of Hawaii." Section 134 (a) provides that "The district judges, except in Hawaii and Puerto Rico, shall hold office during good behavior. The district judges in Hawaii and Puerto Rico shall hold office

for terms of six and eight years, respectively, and until their successors are appointed and qualified."

In view of the foregoing, whatever may have been the status of the district Court for Hawaii prior to September 1, 1948, the effective date of revised Title 28, there can be no doubt that the court is now "a district court of the United States" in all respects pertinent to the instant question and for the application of Sections 2281, 2283 and 2284. Cf. *Mookini v. United States*, 303 U. S. 201, 205; *Ex parte Collins*, 277 U. S. 565, 567, and *Phillips v. United States*, 312 U. S. 246, 248-254. Congress has seen fit to cover, co-ordinate and integrate the District Courts for Hawaii and Puerto Rico into the federal court system as far as this can be done without constitutional amendment. True, these district courts remain legislative tribunals created by Congress in the exercise of its "sovereign congressional faculty" under Article IV, Section 3 of the Constitution of the United States instead of "true United States courts" authorized by Article III. See *Balzac v. Porto Rico*, 258 U. S. 298, 312. No constitutional provision limits the co-ordination and integration here conceived of and made [38] operable by Congress. The District Court for Hawaii therefore must be held to be "a district court" within the purview of the sections of revised Title 28 referred to.

The second question, i.e., the effect to be attributed to the use of the word "State," remains for disposition, however. It is indeed a difficult one.

There is no doubt that in organizing the Territory of Hawaii Congress saw fit to give to the local government broad domestic powers separating its operations from those of the federal government within the Territory, and that it bestowed upon the Territory a form of organization more like that of a State than had previously been given to any other area.⁵³ See *Alesna* [39] v. *Rice*, D. C. Haw., 69 F.

⁵³See Defendants' Exhibit Q, the Message from the President, transmitting the Report of the Hawaiian Commission, 55th Cong. 3rd Sess. Senate Document No. 16, p. 162. "Report of the Committee on Judiciary," wherein it is stated in part, "Hawaii having been hitherto a single independent State, its courts have exercised much of the jurisdiction exercised by both the Federal and State Courts in this country. In this respect the Hawaiian courts have resembled somewhat the courts of the Territories of the United States, which, as a rule, have had much Federal jurisdiction, as well as jurisdiction of cases arising under the Territorial laws. It seems very desirable in the case of Hawaii to separate these jurisdictions, leaving all cases arising under the laws of the Territory to Territorial courts and transferring all jurisdiction of a Federal nature to a district court of the United States to be established for the Territory of Hawaii. This district court should have also the jurisdiction of a circuit court of the United States.

"There are many reasons which make this separation of jurisdictions desirable. The foreign shipping already calling at the ports of Hawaii, as well as the shipping from the United States is very extensive and is rapidly increasing. With the natural growth of commerce on the Pacific, and especially in view of the change in the ownership of the Philippines, the near completion of the Siberian Railway, and the projected Nicaraguan Canal, the shipping that will call at the Hawaiian Islands will undoubtedly

Supp. 897, 899, citing *People of Puerto Rico v. Shell Co.*, 302 U. S. 253. See also *Aleson v. Rice*, 74 F. Supp. 865. It is also clear that Congress

increase more rapidly in the future than it has increased in the past. This will give rise to many important admiralty cases in Hawaii, some of which may become matters of international interest.

"It is obviously very desirable that jurisdiction over such cases should be exercised by Federal judges. Again, in the event of war, Hawaii may become a center for the trial of prize cases, of which the Federal courts should have exclusive jurisdiction. By making the relations between the territorial courts of Hawaii and the Federal courts, as to appeals, removal of causes, etc., the same as the corresponding relations between the State and Federal courts, all cases of a local nature can be tried and determined finally in the islands, and thus the expense and delay of bringing such cases to the mainland, and possibly to Washington, a distance of 5,000 miles, will be avoided. (Emphasis added.)

"Very little change need be made in the organization of the territorial or local judiciary. The organization and procedure of the Hawaiian courts is already very similar to what is found in the United States. This has been the result of a growth of sixty years of constitutional government in Hawaii under American influences. The judiciary department, unlike the executive and legislative departments, has always been free from politics. The people of Hawaii have great confidence in their judiciary and have always looked to it as the one impregnable bulwark of their liberties. The last two sovereigns under the monarchy, who did so much to lower the standard of the executive and legislative departments, did not dare to encroach materially upon the judiciary department until the final attempt of the Queen, which resulted in the loss of her throne."

recognized the distinction between the territorial courts and the United States District Court for the Territory of Hawaii. See Section 86 of the Organic Act, as amended⁵⁴ by Section 8 of the Act of June 25, 1948, c. 646. As early as 1901 the Court of Appeals for the Ninth Circuit in *Wilder's S. S. Co. v. Hind*, 108 F. 113, 116, perceived that distinction, stating, "The system of courts created by the [Organic] Act for the Territory of Hawaii differs radically from the system of courts which congress had theretofore created for any of the territories. In no other territory has there been a division of jurisdiction between cases which properly belong to courts of the United States and other cases. Congress found in the republic of Hawaii a system of courts already established, whose jurisdiction was complete, and from the highest tribunal of which there was no appeal. To that system congress, by the act, added a district court, conferring upon it the jurisdiction which pertains to the district and circuit courts of the United States, and providing for removing to that court from the territorial

⁵⁴To read as follows:

"The laws of the United States relating to removal of causes, appeals and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii."

The language quoted is in all pertinent respects identical with that which has always been included in Section 86 of the Organic Act. See 31 Stat. 158.

courts causes which under the removal acts were removable from a state court to a court of the United States." See also *Ex parte Wilder's Steamship Company*, 183 U. S. 545. It is interesting to note that the general principle established by Wilder's case was early made applicable to [40] habeas corpus proceedings in the District Court of the Territory by a series of cases holding that the federal rule against interference with criminal proceedings in the Territorial Courts might prevent the issuance of the writ except in cases of peculiar urgency. See *In the matter of Marshall*, 1 D. C. Haw. 34, 37-42; *In the matter of Atcherley*, 3 D. C. Haw. 404; *Soga v. Jarrett*, 3 D. C. Haw. 502, 504; *In re Curran*, 4 D. C. Haw. 730, 738.

The language of Section 86 of the Organic Act as amended by Section 8 of the Act of June 25, 1948, c. 646, provides that, "The laws of the United States relating to removal of causes, appeals and other matters and proceedings as between the courts of the United States and the courts of the several states shall govern in such matters and proceedings as between the courts of the United States and the courts of the Territory of Hawaii."⁵⁵ seems to support the conclusion that a statute of Hawaii was intended by Congress to be treated as if it were a statute of a State. True, "removal of causes" is included in Section 86 and it is on this phraseology that the decision of the Court of Appeals for the Ninth Circuit in *Yeung v. Territory of Hawaii*, 132

⁵⁵Emphasis added. See note 54, *supra*.

F. 2d 374, can be bottomed. But the last phrase of Section 86, "other matters and proceedings," is as powerfully inclusive as if the word "all" had been expressly inserted before the word "other." If the laws of the United States are to govern in all matters, both procedural and jurisdictional, it surely was the intent of Congress to treat the United States District Court for Hawaii as if, procedurally and jurisdictionally, though within the framework of the Constitution, it were in fact a district Court of the United States, and also to treat the Territory of Hawaii insofar as its relations to that court are concerned as if it were in fact a State of the United States. If this be so it would follow that a statute passed by the Legislature of the Territory of Hawaii is to be tried and tested by a three-judge [41] Section 2281 court as if it were in fact a statute enacted by a State of the United States.

The Territory of Hawaii, like the Territory of Alaska, and perhaps in contradistinction to Puerto Rico, is a fully "organized" territory. Puerto Rico may possibly still retain a lingering status of a "possession" or quasi territory though this is to be doubted. See *Balzac v. Porto Rico*, *supra*, at p. 309. Cf. *Rassmussen v. United States*, 197 U. S. 516. See also *Dorr v. United States*, 195 U. S. 138, 148, and *Downes v. Bidwell*, 182 U. S. 244, 305, the concurring opinion of Mr. Justice White. See the provisions of the Organic Act of Puerto Rico, 48 U. S. C. A. Sections 731 et seq. Section 35 of the Organic Act of Puerto Rico as it stood prior to

the amendment effected by Section 21 of the Act of June 25, 1948, c. 646, was comparable to Section 86 of the Organic Act of Hawaii as it is now and as it was prior to amendment. We can find no valid basis of distinction between the decision of this court in the *Mo Hock Ke Lok Po v. Stainback*, 74 F. Supp. 852, and that of the Court of Appeals for the First Circuit in *Benedicto v. West India & Panama Telegraph Co.*, 256 F. 417, 418-9. But see *Munoz v. Porto Rico Ry. Light & Power Co.*, 83 F. 2d 262, 264-267. Cf. *Sancho v. Bacardi Corporation of America*, 1 Cir., 109 F. 2d 57, modified and affirmed in part and reversed in part in 311 U. S. 150, 167. See also *Alaska v. Troy*, 258 U. S. 101, and *Dooley v. United States*, 183 U. S. 151. There is of course high authority for construing the word "territory" employed in a statute under some circumstances as if it were in fact the word "State." See the very recent decision of the Supreme Court in *Andres v. United States*, 333 U. S. 740, 745. See for example *United States v. Bevans*, 3 Wheat. 336, 385; *Talbott v. Silver Bow County*, 139 U. S. 438, 444; and *Wynne v. United States*, 217 U. S. 234. Cf. *Alesna v. Rice*, *supra*, and *Hall v. Hawaiian Pineapple Co.*, D. C. Haw., 72 F. Supp. 533, and of course, the *Mo Hock Ke Lok Po* decision itself. Compare the recent decision of the [42] Court of Appeals for the Ninth Circuit in *International Longshoremen's Union v. Wirtz*,* *supra*, affirming the decision of the

*See star note *supra*, following note 20.

Supreme Court of Hawaii in *I. L. W. U., et al. v. Wirtz, et al.*, 37 Haw. 404.

Much of course can be said upon the other side. We find three cases exceedingly troublesome: *Phillips v. United States*, *supra*, *Mookini v. United States*, *supra*, and *Ex parte Collins*, *supra*. The first decision, which is relied on strongly in Chief Judge Denman's dissenting opinion in the *Mo Hock Ke Lok Po* case points out that Section 266 of the old Judicial Code was not "a measure of broad social policy to be construed with great liberality, but as an enactment technical in the strict sense of the term and to be applied as such." 312 U. S. at p. 251. Mr. Justice Frankfurter then went on to say, "To bring this procedural device into play—to dislocate the normal operations of the system of lower federal courts and thereafter to come directly to this Court—requires a suit which seeks to interpose the Constitution against enforcement of a state policy, whether such policy is defined in a state constitution or in an ordinary statute or through the delegated legislation of an 'administrative board or commission.' The crux of the business is procedural protection against an improvident state-wide doom by a federal court of a state's legislative policy. This was the aim of Congress and this is the reconciling principle of the cases."

In the *Mookini* case the Supreme Court, by Mr. Chief Justice Hughes, decided that the provisions of Section 86 of the Organic Act of Hawaii, as it existed prior to the recent amendment, was not de-

cisive in requiring the Criminal Appeals Rules prescribed by the Supreme Court for district courts of the United States to be applied in the District Court of Hawaii. See 303 U. S. at p. 205. This decision must now be read in the light of the provisions of revised Title 28. As we have demonstrated Congress has seen fit to obliterate procedural and jurisdictional distinctions between the two [43] types of courts bestowing on the District Court of Hawaii insofar as Congress could by legislation the jurisdiction of a constitutional court. Congress had looked in this direction for some time having provided by Section 86 of the Organic Act, prior to the recent amendment, that the District Court of Hawaii "... shall have the jurisdiction of district courts of the United States, and shall proceed . . . in the same manner as a district court . . ."

In *Ex parte Collins*, *supra*, the Supreme Court, by Mr. Justice Brandeis, pointing out that the provisions of Section 266 were intended to restrain the enforcement "of a statute of a State," said that it "was intended to embrace a limited class of cases of special importance and requiring special treatment in the interest of the public." In footnote 1, 277 U. S. at p. 567, Mr. Justice Brandeis pointed out that the amendment to the Commerce Act, which later became Section 266, "... evidently recognizes the superior degree of consideration and sanction which should be given to a state statute and [Section 266] prevents hasty interference with the action of a sovereign state.", citing 45 Cong. Rec. 7253.

See also 277 U. S. at pp. 567-569. It is true that as used in the Constitution of the United States the word "state" has been held to mean "state" as a member of the Union. See *Hepburn v. Ellzey*, 2 Cranch 445, 451; *New Orleans v. Winter*, 1 Wheat. 91, 94, and *Hooe v. Jamieson*, 166 U. S. 395. Cf. *Enes v. Hoopai, Chief of Police*, 38 Haw. 126, 134-140.

The matter is further complicated by various appeal provisions. As we have pointed out, Section 86 of the Organic Act (see note 54, *supra*) requires that appeals from the District Court for Hawaii should be had and allowed to the Court of Appeals for the Ninth Circuit in the same manner as from district courts to the respective courts of appeals as provided by law. A proceeding under Section 2281 of revised Title 28, like one under Section 266 of the old Judicial Code, affords a direct appeal to the Supreme Court of the United States. [44] See Section 1253 of revised Title 28 providing for direct appeal to the Supreme Court from decisions of a three-judge court. But see also Section 1294 of revised Title 28 which provides for appeals from decisions of the district and territorial courts to the various courts of appeals. Section 128 of the old Judicial Code had ordained that the circuit courts of appeals should have jurisdiction to review by appeal final decisions in the United States District Courts for Hawaii and for Puerto Rico in all cases. This distinction had come into the law by the Act of February 13, 1925, 43 Stat. 936. Section 13 of

that Act provided expressly for the repeal of "So much of the Hawaiian Organic Act as amended by the Act of July 9, 1921 as permits a direct review by the Supreme Court of cases in the courts of Hawaii." The Act of July 9, 1921, 42 Stat. 108, 120, had reiterated the pertinent portions of an Act of March 3, 1909, 35 Stat. 838, which amended Section 86 of the Organic Act by permitting appeals and writs of error to be taken to the Supreme Court of the United States from the District Court for Hawaii ". . . in cases where appeals for writs of error are allowed from the district and circuit courts of the United States to the Supreme Court. . . ."

But Sections 1253 and 1294 of revised Title 28 seemingly have broadened the base for appeal to the Supreme Court. Section 1253 provides: "Except as otherwise provided by law, any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges." Section 1294, which must be read in connection with Section 1253, provides, insofar as is pertinent here, that "Appeals from reviewable decisions of the district and territorial courts shall be taken to the courts of appeals as follows: From a district court of the United States to the court of appeals for the circuit embracing the district;". As we have seen the District Court for the District [45] of Hawaii has been integrated into the federal

judicial system and has been made a district court of the United States insofar as that may be permissible under constitutional limitations. It remains a legislative and not a constitutional court but the procedure of appeal from its decisions is without any constitutional barrier. It follows, therefore, that appeals from the District Court for Hawaii go to the Court of Appeals for the Ninth Circuit except in those cases referred to in Section 1253 which permit direct appeal to the Supreme Court of the United States, viz., appeals from decisions of district courts of three judges. All other appeal procedures are wiped out and obliterated by the new Judicial Code which has amended Section 86 of the Organic Act. It would seem to have been the intention of Congress to authorize appeals from three-judge decisions of the District Court for Hawaii direct to the Supreme Court of the United States.

We conclude on consideration of all the foregoing that it was the intention of Congress by the enactment of the provisions of revised Title 28 referred to to award to statutes of Hawaii and to the United States District Court for the District of Hawaii status whereby the provisions of Section 2281 must be employed to test the constitutionality of territorial acts.

If, however, we are wrong in our conclusion that we are a properly constituted three-judge court qualified by the provisions of Section 2281 to hear and adjudicate the validity of the statutes involved in the instant cases, we think that we are authorized

to do so as the United States District Court for the District of Hawaii comprised of three judges qualified to sit therein and sitting en banc. As we stated in *Reinecke v. Loper*, D. C. Haw., 77 F. Supp. 333, in note 2 cited to the text, the present writer was designated to sit in the Court of Appeals for the Ninth Circuit by Mr. Chief Justice Vinson pursuant to Section 13⁵⁶ of the old [46] Judicial Code. Thereafter, he was designated by Senior United States Circuit Judge Francis A. Garrecht of the Ninth Circuit to serve temporarily in the District Court of the United States for the District of Hawaii pursuant to Section 14⁵⁷ of the former Judicial Code. This section provided: "Each district judge designated and assigned under the provisions of section 17 of this chapter may hold separately and at the same time a district court in the district or territory to which such judge is designated and assigned and discharge all the judicial duties of the district or territorial judge therein.⁵⁸ Each circuit judge designated and assigned to serve temporarily as a circuit judge in another circuit may and shall, during the period of his assignment, exercise all the judicial powers and discharge and perform all the judicial duties of and be subject to the same assignments of duties as the circuit judges of the circuit

⁵⁶See and compare Section 291 of revised Title 28.

⁵⁷See and compare Section 291 of revised Title 28 and in particular subparagraphs (c). Compare also Section 292 of revised Title 28.

⁵⁸Emphasis added.

to which he is designated and assigned for temporary duty." See also Sections 15, 17 and 18 of the old Judicial Code and Sections 291, 292, 295 and 296, constituting Chapter 13 of revised Title 28, under which we render our present decisions. It should be pointed out that the substance of the pertinent provisions of revised Title 28 is identical with that of the former statutes referred to. It follows, therefore, that the present writer by virtue of the two assignments and designations referred to is qualified to sit in and to determine the cases at bar as a judge sitting in the District Court for the District of Hawaii.

Judge George B. Harris, a District Judge for the Northern District of California, was also assigned and designated to sit in the District Court for the District of Hawaii by Senior United States Circuit Judge Garrecht pursuant to the provisions of Sections 13 and 14 of the former Judicial Code and sits and determines the instant cases pursuant to the provisions of revised Title 28 referred to in [47] the previous paragraph. Chief Judge Delbert E. Metzger was the Senior United States District Judge of the District Court for the District of Hawaii at the time the instant cases were heard.⁵⁹ All

⁵⁹It may be asserted that the District Court for Hawaii when it sits en banc may not be comprised of more than two judges since Section 133 of revised Title 28 provides, as did Section 86 of the Organic Act, for only two district judges in Hawaii. Such a limitation in our opinion does not exist. Section 132(b) of revised Title 28 provides, it is true, that

three judges, therefore, were and are qualified to sit in the instant cases and dispose of them as a court of the District Court of the District of Hawaii sitting en banc. In conclusion it should be pointed out that our decisions are unanimous. See *Commission v. Brashear Lines*, 312 U. S. 621, 626.

each district court shall consist of the district judges for the district in active service. But that subsection also provides that, “. . . judges designated or assigned shall be competent to sit as judges of the Court.” The two judges sitting in this case with the Chief Judge of the District Court were thus designated or assigned and comprise a court of three judges sitting en banc.

The other District Judge for Hawaii did not sit. This fact does not prevent this tribunal from exercising jurisdiction in the instant cases for it is a rule of general application that the death, disqualification or absence of a judge will not deprive the remaining judges of the court of authority to hold court and to adjudicate cases provided that the number of the court is not reduced below that legally required for the transaction of business. See 14 Am. Jur., Courts, Sec. 58, p. 282; 21 C.J.S., Courts, Sec. 183(b), p. 294, and the authorities cited therein. See also the opinion of Mr. Chief Justice Marshall in *Pollard v. Dwight*, 8 U.S. 251, 255-6; *Frank v. Bayuk*, 322 Pa. 282, 284, 185 A. 705, 706; *Zimmerman v. Pennsylvania R. Co.*, 293 Pa. 264, 266, 142 A. 220; *In re McCormick's Contested Election*, 281 Pa. 281, 285, 126 A. 568, 570; *Cowan v. Murch*, 97 Tenn. 590, 601, 37 S.W. 393, 396; and *Long v. State*, 59 Tex. Crim Rep. 103, 116, 127 S.W. 551, 558. By Section 132(c) of revised Title 28, a quorum of the United States District Court for the District of Hawaii consists of but one judge. Section 132(b) seems to dispose of any possible doubt respecting the authority of the three judges shown on this opinion to sit en banc in the instant cases and to adjudicate the issues presented.

The General Jurisdiction of the Court

In the decision of this court in *Mo Hock Ke Lok Po v. Stainback*, *supra*, 74 F. Supp. at p. 853, it was said: "The court sua sponte notes that the jurisdictional amount of [48] Section 41 (1) is required of all civil suits litigating constitutional questions except those stated in the succeeding 27 paragraphs [of Section 41]. No one of these gives the district courts jurisdiction of a deprivation of a right created by territorial law, though paragraph (14) gives such jurisdiction to such a deprivation by a state law . . . It thus seems that Congress intends that a territorial invasion of the right in controversy involving less than \$3,000 should have its litigation in the territorial courts." The court then reached the conclusion that unless appropriate amendments as to jurisdictional amounts were made the complaint would have to be dismissed as to the plaintiffs designated.

Whatever may have been the extent of the jurisdiction of the District Court for Hawaii at the time of the decision in the *Mo Hock Ke Lok Po* case, viz. on October 22, 1947, we entertain no doubt for the reasons stated under the last heading of this opinion that the jurisdiction of the District Court for Hawaii is for the purposes of the instant cases co-extensive with that of any district court of the United States; that of the District of Nevada, for example. It must be pointed out that R. S. Section 1979, 8 U. S. C. A. Section 43 provides that: "Every person who, under color of any statute, ordinance,

regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities, secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." See also R. S. Section 1977, 8 U. S. C. A. Section 41, which provides that: "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject [49] to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

Section 1343 of revised Title 28, treating of civil rights, provides: "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 47 of Title 8; (2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in Section 47 of Title 8 which he had knowledge were about to occur and power to prevent; [and in particular] (3) To re-

dress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, or any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States." The suits at bar based on deprivation of civil rights, may be maintained without allegations of jurisdictional amounts as was required by old Section 24 (1), now Section 1331 of revised Title 28. See *Hague v. Committee for Industrial Organization*, 3 Cir., 101 F. 2d 774, 788, affirmed, though modified on other grounds, in *Hague v. C. I. O.*, 307 U. S. 496. Nor is citizenship a necessary factor. *Id.* pp. 526 and 531. We so hold in respect to both suits.

As we have stated, the two major industries of the Hawaiian Islands are the growing of sugar cane and pineapples and a very great part of these products moves in commerce to the United States mainland. It cannot be doubted that the interruption of equable and peaceful labor relations in the Territory by strikes in the sugar and pineapple industries will affect disastrously that flow of commerce. The provisions of the Labor Management Relations Act, 1947, 29 U. S. C. A. Sections 157-8, are applicable to the Territory of Hawaii. See Rules and Regulations Implementing [50] National Labor Relations Act amended by Labor Management Relations Act, 1947, Series 5, 29 U. S. C. A. Section 203.7, which states, "The term 'State' as used herein shall in-

clude . . . all . . . territories . . . of the United States." Upon analogy, therefore, to the doctrine enunciated by the Supreme Court in *A. F. of L. v. Watson*, 327 U. S. 582, 589-592, and in view of the findings hereinafter made respecting the impact of both the unlawful assembly and riot act and the conspiracy statute of the Territory of Hawaii, respectively Chapters 277 and 243 of the Revised Laws of Hawaii 1945, and the manner of the statutes' enforcement on labor relations in the Territory, we conclude that this court has jurisdiction of the instant causes under Section 1337 of revised Title 28, U. S. Code, as well as under Section 1343 of that title.

As to the Constitutionality of the Unlawful Assembly and Riot Act of the Territory of Hawaii.

It will be borne in mind that the individual plaintiffs, Kaholokula and others, Rania aside, at No. 836, have been indicted for unlawful assembly and riot and conspiracy in the indictment No. 2365, and that the individual plaintiffs at No. 828, Kawano aside, are held on complaints based on the unlawful assembly and riot act. For these reasons the constitutionality of both statutes is attacked.

The unlawful assembly and riot act of the Territory of Hawaii, "Riots and Unlawful Assemblies," Chapter 277, as contained in the Revised Laws of Hawaii 1945, in pertinent part is set out in the footnote.⁶⁰ The origin of the law is shrouded in some ob-

⁶⁰Sec. 11570. "Where three or more persons are, of their own authority, assembled together with dis-

scurity. It came into written existence through the hands of the Honorable William Little Lee, the

turbance, tumult and violence, and striking terror or tending to strike terror into others, such meeting is an unlawful assembly within the meaning of the provisions of this chapter."

Sec. 11571. "A riot is where three or more being in unlawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others."

Sec. 11572. "Menacing language, or gestures, or show of weapons or other signs or demonstrations tending to excite terror in others, are sufficient violence to characterize an unlawful assembly or riot."

Sec. 11573. "Concurrence in an intent of tumult and violence, and in any violent tumultuous act, tending to strike terror into others, is a sufficient joining in intent to constitute a riot, though the parties concerned did not previously concur in intending the act. For example, where persons present at a public performance concur in the intent to disturb the same by tumult and violence, tending to strike terror; or concur in one or more acts of tumult or violence tending to strike terror, done by any of the assembly."

Sec. 11574. "It is not requisite in order to constitute an unlawful assembly or riot, that persons should have come together with a common or unlawful intent, or in any unlawful manner; or that the object of the meeting, or the act done or intended, should of itself be unlawful. The tumult and violence tending to excite terror, characterize the offense, though the persons may have assembled in a lawful manner, and though the object of the meeting, if legally pursued, or the act done or intended, if performed in a proper manner, would be lawful."

Sec. 11575. "Persons present at a riot or unlawful assembly, and promoting the same or aiding, abetting, encouraging or countenancing the parties

first Chief Justice of the Supreme Court of Hawaii. On September 27, 1847, the King-appointed

concerned therein by words, signs, acts or otherwise, are themselves parties thereto and principals therein."

Sec. 11576. "In case of an unlawful assembly being by proclamation or otherwise ordered to disperse by any one having legal authority to disperse the same, any one voluntarily remaining in the assembly after notice of the order, except for keeping the peace, is thereby a party concerned in the unlawful assembly."

Sec. 11577. "Every person present in an unlawful assembly is presumed to have notice of an order given by lawful authority in lawful manner for the same to disperse."

Sec. 11578. "Whoever is guilty of a riot or unlawful assembly, having for its object the destruction or injury of any house, building, bridge, wharf, or other erection or structure; or the destruction or injury of any ship or vessel, or the furniture, apparel of cargo thereof, shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding five hundred dollars; and shall also be answerable to any person injured to the full amount of his damage."

Sec. 11579. "Whoever is guilty of being a party concerned in a riot or unlawful assembly endangering the life, limb, health or liberty of any person, or in any other riot or unlawful assembly, not of the description designated in section 11578, shall be punished by a fine not exceeding one thousand dollars or by imprisonment at hard labor for not more than twenty years."

Sec. 11580. "If upon the trial of any person for being concerned in a riot or unlawful assembly as described in section 11579, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any offense mentioned in section 11578, then the jury may return as their

House of Nobles and Representatives of Hawaii
by resolution authorized Mr. Lee to examine the laws

verdict that he is not guilty of the offense charged, but is guilty of such offense, and he may be punished accordingly."

Sec. 11581. "In case of any riot or unlawful assembly in any town, village or district, it shall be the duty of every district magistrate there resident, and also of the high sheriff, sheriff, and his deputies, and of the chief of police for the town, village or district to go among the persons so assembled, or as near to them as may be with safety, and in the name of the Territory to command all the persons so assembled immediately and peaceably to disperse; and if the persons shall not thereupon so disperse, it shall be the duty of each of the officers to command the assistance of all persons present, in seizing, arresting and securing in custody the persons so unlawfully assembled, so that they may be proceeded with for their offense according to law."

Sec. 11582. "If any persons riotously or unlawfully assembled, who have been commanded to disperse by the high sheriff, sheriff, deputy sheriff, chief of police, or district magistrate, shall refuse or neglect to disperse without unnecessary delay, any two of the officers may require the aid of a sufficient number of persons in arms, or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient forthwith to disperse and suppress the unlawful, riotous, or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law."

Sec. 11583. "Whenever an armed force shall be called out for the purpose of suppressing any tumult or riot or unlawful assembly, or to disperse any body of riotous men, the armed force shall obey such orders for suppressing the riot or tumult or for dispersing and arresting the persons who are committing any of the said offenses, as they may

of Hawaii and in effect to compile them.⁶¹ The unlawful assembly and riot act may perhaps have been in existence by edict promulgation prior to 1833 when King Kamehameha III came to the throne. The law appears in substance in the Penal Code of the Hawaiian Islands adopted by the House of Nobles and Representatives on June 21, 1850, known colloquially as "Lee's Compilation." In any event it is clear that the statute predates the

receive from the high sheriff, sheriff, or chief of police, and also such further orders as they may receive after they shall arrive at the place of the unlawful, riotous or tumultuous assembly, as may be given by any two of the magistrates or officers mentioned in the preceding section."

Sec. 11584. "If by reason of the efforts made by any two or more such magistrates or officers, or by their direction, to disperse the unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or any other person then present, as spectators or otherwise, shall be killed or wounded, the magistrates and officers and all persons acting by their order or under their direction shall be held guiltless and justified by law, and if any of the magistrates or officers, or any person acting under their authority or by their direction shall be killed or wounded, all the persons so at the time unlawfully, riotously or tumultuously assembled, and all other persons who, when commanded or required, shall have refused to aid and assist the magistrates or officers, shall be held answerable therefor."

⁶¹See Journal House of Representatives, Hawaii, September 27, 1847, p. 15. See Defendants' Exhibit P, a memorandum prepared by Maude Jones, Archivist, Board of Commissioners of Public Archives.

Hawaiian Constitution of 1852 by at least two years.

The unlawful assembly and riot act of the Territory of Hawaii, Sections 11570-11584, Revised Laws of Hawaii 1945, bears a startling resemblance to the substance of the riot act of George I.⁶² In-

⁶²Geo. I, stat. 2, c. 5. Cf. also 36 Geo. III, c. 8, and discussion in Buckle. *History of Civilization in England*, Vol. I, 351, cited to the text in note 9 in *Bridges v. California*, 314 U. S. 252 at p. 265.

The statute of Geo. I is as follows:

“Whereas of late many rebellious riots and tumults have been in divers parts of this kingdom, to the disturbance of the publick peace, and the endangering of his Majesties person and government, and the same are yet continued and fomented by persons disaffected to his Majesty, presuming so to do, for that the punishments provided by the laws now in being are not adequate to such heinous offences: and by such rioters his Majesty and his administration have been most maliciously and falsely traduced, with an intent to raise divisions, and to alienate the affections of the people from his Majesty: Therefore for the preventing and suppressing of such riots and tumults, and for the more speedy and effectual punishing the offenders therein, be it enacted by the Kings most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and of the commons, in this present Parliament assembled, and by the authority of the same, that: If any persons, to the number of twelve or more, being unlawfully, riotously, and tumultuously assembled together, to the disturbance of the publick peace, at any time after the last day of July in the year of our Lord one thousand seven hundred and fifteen, and being required or commanded by any one or more justice or justices of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head officer, or justice of the peace of any

deed, it may be fairly stated that [54] the George First statute is more favorable to the public and to civil rights than is the unlawful assembly and riot

city or town-corporate, where such assembly shall be, by proclamation to be made in the Kings name, in the form hereinafter directed, to disperse themselves, and peaceably to depart to their habitations or to their lawful business, shall to the number of twelve or more (notwithstanding such proclamation made) unlawfully, riotously and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation that then such continuing together to the number of twelve or more, after such command or request made by proclamation, shall be adjudged felony without benefit of clergy, and the offenders therein shall be judged felons, and shall suffer death as in case of felony without benefit of clergy.

“II. And be it further enacted by the authority aforesaid, That the order and form of the proclamations that shall be made by the authority of this Act shall be as hereafter followeth, (that is to say) the justice of the peace, or other person authorized by this Act to make the said proclamation, shall, among the said rioters, or as near to them as he can safely come, with a loud voice command or cause to be commanded silence to be while proclamation is making and after that, shall openly and with loud voice make or cause to be made proclamation in this words or like in effect: Our sovereign lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations or to their lawful business, upon the pains contained in the Act made in the first year of King George. for preventing tumults and riotous assemblies. God save the King.

“And every such justice and justices of the peace, sheriff, under-sheriff, mayor, bailiff, and other head officer aforesaid, within the limits of their respective jurisdictions, are hereby authorized, empowered, and

act of Hawaii. It should be noted at the outset that the statute of George I deemed a gathering not to be dangerous [56] until twelve persons had assem-

required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where such unlawful, riotous, and tumultuous assembly shall be, of persons to the number of twelve or more, and there to make or cause to be made proclamation in manner aforesaid.

“III. And be it further enacted by the Authority aforesaid, That if such persons so unlawfully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together, and not disperse themselves within one hour, that then it shall and may be lawful to and for every justice of the peace, Sheriff or under-sheriff of the county where such assembly shall be, and also to and for every high or petty constable, and other peace-officer within such county, also to and for every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace-officer of any city or town-corporate where such assembly shall be, and to and for such other person and persons as shall be commanded to be assisting unto any such justice of the peace, sheriff or under-sheriff, mayor, bailiff, or other head officer aforesaid (who are hereby authorized and empowered to command all his Majesties subjects of age and ability to be assisting to them therein) to seize and apprehend, and they are hereby required to seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, and forthwith to carry the persons so apprehended before one or more of his Majesties justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law; and that if the persons so unlawfully, riotously, and tumultuously assem-

bled, whereas the territorial statute considers an assembly of "three or more persons" as containing a threat of danger. Both statutes seem to consider a

bled, or any of them, shall happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending or endeavouring to disperse, seize, or apprehend them, that then every such justice of the peace, sheriff, under-sheriff, mayor, bailiff, head officer, high or petty constable, or other peace-officer, and all and singular persons, being aiding and assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the Kings Majesty, his heirs and successors, as against all and every other person and persons of, for, or concerning the killing, maiming, or hurting of any such person or persons, so unlawfully, riotously and tumultuously assembled, that shall happen to be so killed, maimed, or hurt as aforesaid.

"IV. And be it further enacted by the authority aforesaid, That if any persons unlawfully, riotously and tumultuously assembled together, to the disturbance of the publick peace, shall unlawfully, and with force demolish or pull down, or begin to demolish or pull down any church or chapel, or any building for religious worship certified and registered according to the statute made in the first year of the reign of the late King William and Queen Mary, intituled, An Act for exempting their Majesties Protestant subjects dissenting from the Church of England from the penalties of certain laws, or any dwelling-house, barn, stable, or other out-house, that then every such demolishing, or pulling down, or beginning to demolish, or pull down, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy. [This section repealed 7 & 8 Geo. 4, c. 27, s. 1.]

gathering of persons "of their own authority," as contradistinguished from a gathering authorized by the sovereign, as menacing to public order. The

"V. Provided always, and be it further enacted by the authority aforesaid, That if any person or persons do or shall, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly lett, hinder, or hurt any person or persons that shall begin to proclaim or go to proclaim according to the proclamation hereby directed to be made, whereby such proclamation shall not be made, that then every such opposing, obstructing, letting, hindring, or hurting such person or persons so beginning or going to make such proclamation as aforesaid, shall be adjudged felony without benefit of clergy, and the offenders therein shall be adjudged felons, and shall suffer death as in case of felony, without benefit of clergy: and that also every such person or persons so being unlawfully, riotously and tumultuously assembled, to the number of twelve, as aforesaid, or more, to whom proclamation should or ought to have been made if the same had not been hindred, as aforesaid, shall likewise, in case they are any of them, to the number of twelve or more, shall continue together, and not disperse themselves within one hour after such lett or hindrance so made, having knowledge of such lett or hindrance so made, shall be adjudged felons, and shall suffer death as in case of felony without benefit of clergy.

"VI. And be it further enacted by the authority aforesaid, That if after the said last day of July one thousand seven hundred and fifteen, any such church or chapel, or any such building for religious worship, or any such dwelling-house, barn, stable, or other out-house, shall be demolished or pulled down wholly, or in part, by any persons so unlawfully, riotously and tumultuously assembled, that then, in case such church, chapel, building for religious worship, dwelling-house, barn, stable or out-house, shall

statute of George the First required law enforcement officers to order a riotous crowd to disperse, and there had to be a failure on the part of the

be out of any City or Town, that is either a county of itself, or is not within any hundred, that then the inhabitants of the hundred in which such damage shall be done, shall be liable to yield damages to the person or persons injured, and damnified by such demolishing or pulling down wholly or in part; and such damages shall and may be recovered by action to be brought in any of his Majesty's Courts of Record at Westminster (wherein no essoin, protection, or wager of law, or any imparlance shall be allowed) by the person or persons damnified thereby, against any two or more of the inhabitants of such hundred, such action for damages to any church or chapel to be brought in the name of the rector, vicar or curate of such church or chapel that shall be so damnified, in trust for applying the damages to be recovered in rebuilding or repairing such church or chapel; and that judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, be raised and levied on the inhabitants of such hundred, and paid to such plaintiff or plaintiffs in such manner and form, and by such ways and means, as are provided by the statute made in the seven and twentieth year of the reign of Queen Elizabeth, for reimbursing the persons on whom any money recovered against any hundred by any party robbed, shall be levied: And in case any such church, chapel, building for religious worship, dwelling-house, barn, stable, or out-house so damnified, shall be in any city or town that is either a county of itself, or is not within any hundred, that then such damages shall and may be recovered by action to be brought in manner aforesaid (wherein no essoin, protection or wager of law, or any imparlance shall be allowed) against two or more inhabitants of such

people to obey this command before the severe penalties of the statute could be invoked. But the Supreme Court of Hawaii in Territory of Hawaii v.

city or town; and judgment being given for the plaintiff or plaintiffs in such action, the damages so to be recovered shall, at the request of such plaintiff or plaintiffs, his or their executors or administrators, made to the justices of the peace of such city or town, at any Quarter-Sessions to be holden for the said city or town, be raised and levied on the inhabitants of such city or town, and paid to such plaintiff or plaintiffs, in such manner and form, and by such ways and means, as are provided by the said statute made in the seven and twentieth year of the reign of Queen Elizabeth, for reimbursing the person or persons on whom any money recovered against any hundred by any party robbed, shall be levied. [This section repealed 7 & 8 Geo. 4, c. 27, s. 1.]

“VII. And be it further enacted by the authority aforesaid. That this Act shall be openly read at every Quarter-Sessions, and at every leet or law-day.

“VIII. Provided always, That no person or persons shall be prosecuted by virtue of this act, for any offence or offences committed contrary to the same, unless such prosecution be commenced within twelve months after the offence committed.

“IX. And be it further enacted by the authority aforesaid, That the sheriffs and their deputies, stewards and their deputies, bailiffs of regalities and their deputies, magistrates of royal boroughs, and all other inferior judges and magistrates, and also all high and petty-constables, or other peace-officers and County, stewardry, city, or town, within that part of Great Britain called Scotland, shall have the same powers and authority for putting this present act in execution within Scotland, as the justices of the peace and other magistrates aforesaid, respectively have by virtue of this Act, within and

Joseph Kaholokula, et al., *supra*, 37 Haw. at p. 639, held that no command to disperse was necessary in order that the penalties prescribed by the law might be invoked. See in particular the Court's interpretation of Section 11581.⁶³ Under the statute

for the other parts of this kingdom; and that all and every person and persons who shall at any time be convicted of any of the offences aforementioned, within that part of Great Britain called Scotland, shall for such offense incur and suffer the pain of death and confiscation of moveables: And also that all prosecutions for repairing the damages of any church or chapel, or any building for religious worship, or any dwelling-house, barn, stable, or out-house, which shall be demolished or pulled down in whole or in part, within Scotland, by any person unlawfully, riotously or tumultuously assembled, shall and may be recovered by summary action, at the instance of the party aggrieved, his or her heirs, or executors, against the county, stewartry, city or borough respectively, where such disorders shall happen, the magistrates being summoned in the ordinary form, and the several counties and stewartries called by edictal citation at the market-cross of the head-borough of such county or stewartry respectively, and that in general, without mentioning their names and designations.

“X. Provided, and it is hereby declared, That this Act shall extend to all places for religious worship in that part of Great Britain called Scotland, which were tolerated by law, and where his Majesty King George, the Prince and Princes of Wales, and their issue are prayed for in express words.”

⁶³We note parenthetically that none of the officers present during the course of the Paia incident, probably twenty in number, gave any order requiring the strikers to disperse and that the Loitering statute, Section 11773, was read by Assistant Chief of Police Freitas.

of George I no felony was committed unless the rioters remained together for a period of an hour after an order to disperse was given. The territorial statute is not clear in respect [57] to the length of time that rioters must remain together. The crime under the ruling of the Supreme Court of Hawaii in the Kaholokula case seems to be completed *eo instanti* when three or more persons have assembled under the conditions set out in Section 11570. Section 11576, relating to the crowd remaining together after an order to disperse is given, therefore becomes of little relevancy.

Section 11570 of the unlawful assembly and riot act of Hawaii undertakes to define "an unlawful assembly." Any assembly of three or more persons "of their own authority" which meets or gathers with disturbance, tumult and violence "striking terror or tending to strike terror into others" is brought within the purview of Chapter 277. Any large group of persons (unless they be persons subject to discipline such as a company of soldiers turning out to fall in) ordinarily will meet or gather with some disturbance or tumult. Three persons in assembly, however, would have to exert their physical capabilities to a considerable degree to meet with appreciable disturbance or tumult. The word "violence" employed in the section surely has its ordinary legal meaning: "The abuse of force. That force which is employed against common right, against the laws, and against public liberty.", "Violence is synonomous with physical force . . .". Bou-

vier's Law Dictionary, Rawle's 3rd Revision. This much of the section is plain. But Section 11570 goes on to provide that the disturbance, tumult and violence must be one "striking terror or tending to strike terror into others * * *" The test here laid down is purely subjective and is very vague. An old fashioned charivari would come within the section's ambit. The test of reasonableness is absent from the statute.

But the definition is further complicated by the provisions of Section 11572 which contains a broader characterization of "an unlawful assembly" and also, as we shall see, of a "riot." Menacing language or menacing gestures, or show of weapons "or other signs or demonstrations [58] tending to excite terror in others" are stated to be "sufficient violence to characterize an unlawful assembly." A political meeting, the participants in which carry banners or transparencies attacking members of the opposition party and stating that they will be put out of public office, would lie within the purview of the words of the section last quoted. In short, any violence or attack, even a verbal or printed one, would make the members of a gathering liable to the penalties prescribed by the statute. Any gathering of pickets, or any picketing, however peaceful, might well "excite terror" in the mind of an employer of labor. Indeed the statute received such an interpretation in effect from the Circuit Court of the Second Circuit by Judge Wirtz, when he issued the *ex parte* injunction referred to

above. See note 21, *supra*. Section 11570 read in conjunction with Section 11572 is so vague that it necessarily fails to meet the test of certainty laid down by the Supreme Court of the United States in *Lanzetta v. New Jersey*, 306 U. S. 451, 453, and *United States v. Cohen Grocery Co.*, 255 U. S. 81.

Concerning Section 11571, which defines a "riot," the same lack of clarity is apparent for the section states nothing more than "... where three or more being in unlawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others." Again the test "striking terror or tending to strike terror into others," is necessarily one which must be purely subjective and hence objectionable. Moreover, Section 11572, as is the case in regard to the definition of "an unlawful assembly" under Section 11570, has been interpolated into Section 11571, "... any gestures ... tending to excite terror in others, are sufficient to characterize ... [a] riot."

Section 11573 deals with concurrence in intent. The provisions of this section are unusual. We shall not repeat them in detail in this opinion but we point out that the first part of the section provides that "Concurrence in [59] an intent of tumult and violence [to be read of course in connection with the definitions of Section 11570], and in any violent tumultuous act, tending to strike terror into others, is a sufficient joining in intent to constitute a riot" It should be noted that a fair reading

of the statute requires the conclusion that "an intent of tumult and violence" is of itself "a sufficient joining in intent to constitute a riot." The phrase "and in any violent tumultuous act," separated in the text by commas, is plainly another and a separate ground upon which a "joining in intent to constitute a riot" may be found. We would agree that any violent tumultuous act on the part of a member of a mob could and should be sufficient to join the actor in the common unlawful intent to maintain a riot. But the section goes much further than this and, as we have indicated, makes a state of mind, without an overt act, illegal and subject to the penalties of the statute. Indeed, it is fair to say that Section 11573 supplies guilt by a kind of association. Guilt could be implied by the mere presence at the scene of any person. There is no reasonable certainty in the section.

Section 11574 states that "It is not requisite in order to constitute an unlawful assembly or riot, that persons should have come together with a common or unlawful intent, or in any unlawful manner; or that the object of the meeting, or the act done or intended, should of itself be unlawful." The second sentence provides that "The tumult and violence tending to excite terror characterize the offense, though the persons may have assembled in a lawful manner, and though the object of the meeting, if legally pursued, or the act done or intended, if performed in a proper manner, would be law-

ful." We do not know what this language means and counsel have suggested no helpful solution. Cf. the opinion of the Supreme Court of Hawaii in Kaholokula case, *supra*, 37 Haw. at pp. 628-9. The section seems to intend the effect, however, that if any terror be excited, a lawful meeting performing lawful acts [60] would fall within the ambit of Chapter 277 and the participants therein would become subject to the penalties of the statute.⁶⁴

Section 11575 deals with promoting or aiding a riot or unlawful assembly and states that any one present aiding, abetting, encouraging or "countenancing" the parties concerned therein by words, signs, acts, "or otherwise" are themselves principals therein. The verb "countenance" means "to give countenance to; to encourage; favor; approve."⁶⁵ It would necessarily follow that anyone whose mien or appearance was deemed to favor the assembly would himself be guilty as a principal.

Section 11576 provides simply that upon "an unlawful assembly" being ordered to disperse by anyone having legal authority to order it to disperse, any person voluntarily remaining in the assembly, "except for keeping the peace" is "... a party con-

⁶⁴Sections 11572-4 are said by the Supreme Court of Hawaii in the Kaholokula case, 37 Haw. at p. 628, to be "explanatory of statutory definitions of the offenses of unlawful assembly and riot..." But the sections cited seem to us to go much further than this explanation suggests.

⁶⁵Webster's New International Dictionary, 2nd Edition.

cerned in the unlawful assembly.” It was the obvious intent of the framers of this section to make anyone remaining on the scene, after an order to disperse was given, a participant in the crime and subject to the penalties of the act. But Section 11577 provides that “Every person present in an unlawful assembly is presumed to have notice of an order . . .” to disperse. Here guilt is created by presumption.

As we have indicated, Section 11572 provides that any menacing language or gestures or other signs or demonstrations tending to excite terror in others are sufficient to characterize an assembly as unlawful. Section 11579 provides that “Whoever is guilty of being a party concerned in a riot or unlawful assembly endangering the life, limb, health or liberty of any person” shall be punished by a fine not exceeding \$1,000 or by imprisonment at hard labor for not more than twenty years. But the clause just [61] quoted is qualified by the phrase “not of the description designated in section 11578.” The provisions of Section 11572 would seem to make any person found guilty of unlawful assembly and riot (other than persons engaging in riots with the object of destruction of property designated in Section 11578) subject to a term of imprisonment at hard labor for not more than twenty years.⁶⁶ Cf. the comments of the Supreme Court of

⁶⁶See, however, the provisions of Section 10842 of the Revised Laws of Hawaii 1945, relating to indeterminate sentences.

Hawaii in the Kaholokula case, 37 Haw. at pp. 628-9.

No part of the text of Section 11580 need be repeated here. The Supreme Court of Hawaii seemed to entertain doubts as to its validity in the Kaholokula case. *Id.* at p. 641. The section's meaning turns on the interpretation of Section 11579 and we think the terms of Section 11580 are so indefinite and uncertain as to fall clearly within the ban of the decisions of the Supreme Court of the United States last cited herein. Indeed, as we have indicated, the whole statute falls within the interdiction. No part of it can be saved.

But Chapter 277 possesses other substantial vices. We entertain no doubt that the provisions of the First Amendment to the Constitution of the United States are applicable to the Territory of Hawaii. See *Farrington v. Tokushige*, 273 U. S. 284, 298-9. See the *Mo Hock Ke Lok Po* case. If not, it is clear that the provisions of the Fifth Amendment do apply despite the fact that Hawaii is a territory. We have likened Chapter 277 to the riot act of George the First. Like that statute it is a gross trespass on the rights of free speech and assembly as guaranteed by the Constitution of the United States. That the Supreme Court of the United States would so regard it we think it is implicit in the statements made by Mr. Justice Black in *Bridges v. California*, 314 U. S. 252, 265. He said specifically that “. . . the restrictions upon assembly⁹ then prevalent in England would have been

regarded [62] as measures which the Constitution prohibited the American Congress from passing." Note "9" cited to the text of Mr. Justice Black's opinion, as has been said, refers specifically to the riot act of George I. Compare the treatment by the Supreme Court of the United States⁶⁷ of like restrictions which have been attempted to be placed upon the rights guaranteed against encroachment by the first ten Amendments to the Constitution.

The statute sub judice must be judged upon its face. The case of *Thornhill v. Alabama*, 310 U. S. 88, is particularly apposite. The Alabama statute (Section 3448 of the State Code of 1923) prohibited loitering or picketing. The words of Mr. Justice Murphy require repetition. He said at pp. 97-8: "The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less pernicious than the restraint on freedom of discussion imposed by the threat of censorship. An accused, after arrest and conviction under such a statute, does not

⁶⁷See *Bridges v. California*, *supra*; *Winters v. New York*, 333 U. S. 507; *Cantwell v. Connecticut*, 310 U. S. 296; *Hague v. C. I. O.*, 307 U. S. 496; *Grosjean v. American Press Co.*, 297 U. S. 233; *Near v. Minnesota*, 283 U. S. 697. Cf. *Cole v. Arkansas*, 333 U. S. 196.

have to sustain the burden of demonstrating that the State could not constitutionally have written a different and specific statute covering his activities as disclosed by the charge and the evidence introduced against him. . . . Where regulations of the liberty of free discussion are concerned, there are special reasons for observing the rule that it is the statute, and not the accusation or the evidence under it, which prescribes the limits of permissible conduct and warns against transgression. . . .”

The unlawful assembly and riot act of the Territory lays too great an emphasis on peace as distinguished from [63] freedom. It exalts order at the expense of the freedom of speech and assembly guaranteed by the First Amendment to the Constitution of the United States. It offers a fertile field for the operation of the agent provocateur who may disturb any public gathering with comparative impunity and cause the arrest of the most innocent participant who may have to stand trial under a theory of guilt by association and presumption.

Among the statute's disabilities are the very heavy penalties which it imposes. They seem out of proportion to the crimes. Compare the VIII Amendment to the Constitution of the United States which prohibits cruel and unusual punishments. While many of the States have not dissimilar statutes there is none which authorizes such a heavy penalty as the statute of Hawaii. Most of the statutes prescribe penalties, fines aside, of a few months', or a

year's, maximum imprisonment.⁶⁸ As Professor Chafee states in "Free Speech in the United States," it is unrealistic to hold "twenty years in prison before a speaker and call him free to speak . . ."⁶⁹ It should be noted again that the very heavy penalty prescribed by Section 11579 first appeared in the statute in 1929, following the disastrous strike of Filipino laborers in Hawaii in 1924. See ante under the heading "The ILWU and the Labor Picture." See Laws of the Territory of Hawaii, 1929, Act 4, p. 3.

We have given careful consideration to the decision of the Supreme Court of Hawaii in the Kaholokula case and to Judge Peters' thoughtful opinion. The ruling is entitled to great weight. But we are a court of the United States construing provisions of the Federal Constitution. We are constrained to a conclusion respecting the unlawful assembly and riot act opposite to that expressed by the Supreme Court of Hawaii. We hold the statute to be unconstitutional for the reasons stated.

As to the Constitutionality of the Conspiracy
Statute of Hawaii

It will be borne in mind that the individual plaintiffs at No. 836, Kaholokula and others, Rania aside, have been indicted for conspiracy, third degree, in the indictment at No. 2365. Accordingly they attack the constitutionality of the conspiracy stat-

⁶⁸See Appendix III to Professor Zachariah Chafee's book, "Free Speech in the United States," at p. 575 et seq., Harvard University Press, 1941.

⁶⁹Id. at p. 10.

ute of the Territory of Hawaii.⁷⁰ The first part of Section 11120 (the example [65] aside) defines conspiracy. It provides that "A conspiracy is a mali-

⁷⁰Sec. 11120. "A conspiracy is a malicious or fraudulent combination or mutual undertaking or concerting together of two or more, to commit any offense or instigate any one thereto, or charge any one therewith; or to do what plainly and directly tends to excite or occasion offense, or what is obviously and directly wrongfully injurious to another:

"For instance—A confederacy to commit murder, robbery, theft, burglary or any other offense prohibited by law; to prevent, obstruct, defeat or pervert the course of justice, by suborning a witness, tampering with jurors, or the like offenses; to groundlessly accuse any one of, and cause him to be prosecuted for, an offense; to charge any one with an offense, with the intent and for the purpose of extorting money from him; to falsely charge one with being the father of an illegitimate child; to cheat another by means of false tokens and pretenses; to manufacture a spurious article for the purpose of defrauding whomsoever the same can be sold to; to destroy a will and thereby prejudice the devisees; to prevent another, by indirect and sinister means, from exercising his trade, and to impoverish him; to establish, manage or conduct a trust or monopoly in the purchase or sale of any commodity."

Sec. 11121. "Any person knowingly acceding to and joining in a conspiracy after the same is formed, is a party thereto, no less than the one who originally takes part in forming the same."

Sec. 11122. "It is not requisite that the act agreed upon should be done or attempted in pursuance of the conspiracy; the conspiracy itself constitutes the offense."

Sec. 11123. "The act of each party to a conspiracy, in pursuance thereof, is the act of all."

cious or fraudulent combination or mutual undertaking or concerting together of two or more, to commit any offense or instigate anyone thereto, or charge anyone therewith; or to do what plainly and directly tends to excite or occasion offense, or what is obviously and directly wrongfully injurious to another; . . .”

Sec. 11124. “Husband and wife cannot by themselves, without others, be guilty of a conspiracy, and the acts or confessions of either are not evidence against the other in a prosecution for conspiracy.”

* * *

Sec. 11127. “On a prosecution for conspiracy, if the jury find, or the magistrate having jurisdiction of the fact consider, the offense to be trivial, the defendants shall be discharged, with or without costs, in the discretion of the court.”

Sec. 11128. “Conspiracy to commit, or to instigate to the commission of a felony; or to charge any one with felony; or to prevent, obstruct, defeat, or pervert the course of justice; or to forge or counterfeit or cheat to an amount exceeding one hundred dollars, is in the first degree and shall be punished by imprisonment at hard labor not more than ten years, or by fine not exceeding ten thousand dollars.”

Sec. 11129. “A conspiracy to establish, create, manage or conduct a trust or monopoly in the purchase or sale of any commodity is in the second degree, and shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding one thousand dollars.”

Sec. 11130. “Conspiracy not appearing to be in the first or second degree, is in the third degree, and shall be punished by imprisonment of not exceeding one year and by fine not exceeding four hundred dollars.”

Sections 11125 and 11126, which relate to procedure, are not presently pertinent.

The conspiracy statute came into the written law of Hawaii in Lee's Compilation, Penal Code of June 21, 1850, in substance as it is today insofar as is pertinent in the instant cases though it, like the unlawful assembly and riot act, may have had earlier existence as a promulgated edict. We are of the opinion that the statute is so broad and vague as to fall within the prohibitions of the authorities cited under the previous heading. The constitutionality of the conspiracy statute has never been tested in this regard insofar as we can ascertain, albeit some of its terms (Section 5720, Revised Laws of Hawaii 1935 in haec verba with Section 11120 of Revised Laws of Hawaii 1945) are discussed and approved in *Territory v. Hart*, 35 Haw. 188, 195-197. Cf. *Territory v. Reyes*, 33 Haw. 180, and *The King v. Joe*, 8 Haw. 287, 288. Section 11120 as drawn is bad on its face; particularly in view of the last clause following the first semicolon as quoted in note 70, *supra*. The term "offense" is clarified, if clarification be necessary, by the provisions of Section 10601, contained in Chapter 222, dealing with "Definitions," Revised Laws of Hawaii 1945. See *Haas v. Henkel*, 216 U. S. 462, and *Hammerschmidt v. United States*, 265 U. S. 182. Cf. what was Section 37 of the Criminal Code, and since September 1, 1945, has become Section 371 of revised Title 18, U. S. Code. Section 10601 states that "The term 'offense,' as [66] used in the laws of the Territory, means the doing what a penal law forbids to be done, or omitting to

do what it commands." The clause of Section 11120 referred to makes two or more persons guilty of conspiracy if they concert together to do "... what is obviously and directly, wrongfully injurious to another ..." and renders the section too vague to withstand attack. The word "wrongfully" is not a term of art in the criminal law. It means "In a wrong manner; unjustly; in a manner contrary to the moral law, or to justice." Bouvier's Law Dictionary, Rawle's Third Revision. Cf. the term "Wrong," Black's Law Dictionary, Third Edition. The test supplied by the statute is, therefore, one of moral law, and two or more persons concerting together to effect a breach of that law or to commit a sin, transgression or misdeed injurious to another, or to fail to do some act which morality requires, that failure being injurious to another, would be guilty of the crime of conspiracy under the statute. This would be true despite the fact that the act done or omitted to be done is not defined in the Penal Code of Hawaii or in any criminal law of the Territory. Cf. the provisions of Section 10601. This portion of the statute clearly does not meet the test of certainty.

But if we are wrong in respect to the foregoing conclusion, it is clear nevertheless that that part of the section following the semi-colon and quoted above does not by any means describe a crime. This part of Section 11120 defines a conspiracy as the doing of that which "plainly and directly tends to excite or occasion offense, or what is obviously and

directly wrongfully injurious to another." If two or more persons were to agree to set up a grocery store (note that the agreement alone, without any overt act, would be sufficient to constitute the crime under Section 11122) in competition with the store of another, under a literal interpretation of Section 11120 they would be guilty of the crime of conspiracy under the statute since what they contemplated doing would be obviously and directly "injurious" to the rival merchant. True, the section employs the word "wrongfully" before the phrase "injurious to another," but the word "wrongfully" is not a term of art in the law and means simply, as we have already stated, "In a wrong manner; unjustly; in a manner contrary to the moral law, or to justice." Bouvier's Law Dictionary, Rawle's 3rd Revision. No common law definition aids the statute in this respect. Cf. *The King v. Angee*, 8 Haw. 259, 260-262. We think it is obvious therefore that Section 11120 fails to state a crime cognizable by any standard of Anglo-American law and for the reasons given is contrary to the guarantees of the Fifth Amendment limiting federal action or to those of the Fourteenth Amendment curtailing action by a State.

The example or explanation contained in the Act (see the second quoted paragraph of note 70, *supra*) beginning with the words, "For instance", demonstrates, we think, how far the statute actually goes. The explanation states that "A confederacy

... to prevent another, by indirect and sinister means, from exercising his trade and to impoverish him ...” is a conspiracy. Picketing, however peaceful, would fall within this ban. The means would be “indirect” and, doubtless, would be considered by many to be “sinister”. The adjective “sinister” is so little a term of art in the law and is so inadequate as a legal description that we cannot find it in any law dictionary. The Supreme Court of Hawaii in the Kaholokula case, 37 Haw. at pp. 625, 636, recognized the right of peaceful picketing, and also indicated, *Id.* at p. 642, that to deprive an individual of his right to work is to deprive him of “liberty” as employed in Section 11579 of the unlawful assembly and riot act. We agree with both positions and state that to deprive a man of his right to work does deprive him of a precious liberty. But we are concerned with a statute which by reason of its vagueness and uncertainty must be held to be unconstitutional in its entirety. We think it would be fruitless to discuss any other sections of the conspiracy statute, Chapter 243, under the circumstances. [68]

The Doctrine of Abstention.⁷¹

If our ruling is correct that we are authorized to adjudicate the cases at bar as a three-judge court

⁷¹The “doctrine of abstention” is referred to by Mr. Justice Frankfurter in *Railroad Comm’n v. Pullman Co.*, 312 U. S. 496, 500-1, where citing such cases as *Beal v. Missouri Pacific R. Co.*, 312 U. S.

pursuant to Section 2281 of revised Title 28, we must deal with the doctrine of "abstention" and will do so shortly. If, on the other hand, we are not authorized by that statute to sit as such a court we adjudicate the instant disputes as the District Court for the District of Hawaii sitting en banc and for reasons stated immediately hereinafter the doctrine of abstention can exercise no effect on our decisions and decrees. Proceeding under the former theory first we will discuss the provisions of Section 2283⁷² of revised Title 28.

Section 2283 provides that "A court of the United States may not grant an injunction to stay a proceeding in a State court except as expressly authorized by Act of Congress, or where necessary aid of its jurisdiction, or to protect or effectuate its judgments." Compare the provisions of Section 86 of the Organic Act, as amended, and those of Section 265 of the old Judicial Code quoted in note

45; *Pennsylvania v. Williams*, 294 U. S. 176 and *Gilchrist v. Interborough Co.*, 279 U. S. 159, he said, "These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary."

⁷²Section 265 of the old Judicial Code provided: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

72 *supra*. Because of the provisions of Section 86 of the Organic Act, set out in note 54 *supra*, the mandate of Section 2283 of revised Title 28 must be imposed in respect to all "matters and proceedings" as between the District Court and the Territorial Courts of Hawaii. But the word "State" as employed in Section 2281 cannot have a different meaning than that which it enjoys when used in [69] Section 2283.⁷³ If the statutes of Hawaii are not "State" statutes the criminal proceedings complained of by the plaintiffs at our Nos. 828 and 836 are not proceedings in a "State court". The sections of the law referred to cannot be read both ways. They are not Janus-faced. If, therefore, the word "State" used in Section 2281 is not applicable to a statute of the Territory of Hawaii, Section 2283 cannot serve as a bar to action taken by this court to enjoin the criminal proceedings complained of in the cases at bar. We believe, however, for the reasons hereinbefore set out, that the Hawaiian statutes *sub judice* must be treated as if they were statutes of a State and that the provisions of Section 2283 are applicable.

It is clear that the doctrine of abstention from

⁷³Both are parts of Chapter 155 and are *pari materia*. See Reviser's Notes to Section 2283, revised Title 28, United States Code, p. 1910, Title 28 United States Code Congressional Service. The Reviser's Notes state: "The phrase 'in aid of its jurisdiction' was added to conform to Section 1651 of this title to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts."

action by injunction by a federal court to restrain proceedings in a State court embodied in Section 2283 of revised Title 28, does not go to the jurisdiction of the federal tribunal but is instead a rule of comity in the form of positive law. *Moran v. Sturges*, 154 U. S. 256; *Riggs v. Johnson County*, 6 Wall. 166. The matter was well put in *Feldman v. Pennroad Corporation*, D. C. Del., 60 F. Supp. 716, 718, affirmed 155 F. 2d 773, cert. den. 329 U. S. 808, wherein it was said "The statute [Section 265 of the old Judicial Code] is a limitation upon the equity powers of the federal courts. When application is made to a federal court to enjoin proceedings in a State court, the duty devolves upon the federal court to determine whether the petition has alleged facts for which relief is prohibited by the statute or whether the equities of the case require that an injunction issue despite the statutory limitation", citing *Smith v. Apple*, 264 U. S. 274. In *Keegan v. State of New Jersey*, 42 F. Supp. 922, 924, a three-judge Section 266 court stated: "The protection of personal rights [70] secured by the Constitution is as important as the protection of property rights secured by it. Section 265 of the Judicial Code, 28 U.S.C.A. Section 379, is not a jurisdictional statute, but one that merely goes to the equity presented by the bill. . . . A federal court therefore may exercise its jurisdiction to prevent the trial of a defendant by a state court where such a trial would invade constitutional rights. Such jurisdiction may be exercised by way of injunction

or in habeas corpus proceedings. In . . . [Truax v. Raich, 239 U. S. 33, 37-38], Mr. Justice Sutherland delivering the opinion of the Supreme Court stated: 'The due and orderly administration of justice in a state court is not to be thus interfered with save in rare cases where exceptional circumstances of peculiar urgency are shown to exist.' "

It has always been the case, however, that a federal court may enjoin proceedings in a State court if necessary to assert and protect a rightful jurisdiction. *Guaranty Trust Co. v. North Chicago St. R. Co.* (1904), 7 Cir., 130 F. 801, cert. den. 194 U. S. 638. Section 2283 of revised Title 28 provides that "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or when necessary in aid of its jurisdiction, or to protect or effectuate its judgments." There is no doubt that Congress set up the safeguards of Section 266 of the old Judicial Code and those of Section 2281 of revised Title 28 to guard against too frequent injunctions by the federal courts to restrain action by State officers acting under State statutes. In *Board of Education v. Barnette*, 319 U. S. 624, the Supreme Court held invalid, on an appeal from a three-judge Section 266 court, a regulation of a state board of education requiring children in public schools to salute the American flag. The regulation referred to must have had the effect of a statute otherwise the impanelment of a Section 266 court would have been held to have been

inappropriate. In *Grosjean* [71] v. *American Press Co.*, 297 U. S. 233, the Supreme Court struck down a statute which had for its purpose the licensing of the press by the imposition of a gross receipts tax for the privilege of engaging in the newspaper business. In *Hague v. C.I.O.*, *supra*, the Supreme Court held two ordinances requiring the licensing of public meetings in Jersey City void on their face and restrained their enforcement. In *Murdock v. Pennsylvania*, 319 U. S. 105, the Supreme Court, on certiorari to the Superior Court of Pennsylvania, held invalid a municipal ordinance requiring religious colporteurs to pay a license tax as a condition to the pursuit of their activities. These authorities show the general application of injunctive principles by courts of the United States to protect from state action rights guaranteed to the people by the First and the Fourteenth Amendments.

But in the decision of the Supreme Court in *Douglas v. Jeannette*, 319 U. S. 157, lies the difficulty in granting the relief which the plaintiffs seek by way of injunction from this court in order to restrain the Hawaiian authorities from proceeding with the criminal prosecutions. In the *Jeannette* case the Supreme Court had before it an unconstitutional ordinance (held to be such in *Murdock v. Pennsylvania*, *supra*, decided the same day), and the District Court of the United States for the Western District of Pennsylvania, by a single judge, had enjoined threatened criminal prosecutions thereunder. See 39 F. Supp. 32. Jurisdiction

in the case was based on Section 24 (14) of the old Judicial Code and the Civil Rights Acts. The Supreme Court by Mr. Chief Justice Stone said, 319 U. S. at pp. 163-164: "It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal [72] case as in a suit for an injunction. . . . Where the threatened prosecution is by state officers for alleged violations of a state law, the state courts are the final arbiters of its meaning and application, subject only to review by this Court on federal grounds appropriately asserted. Hence the arrest by the federal courts of the processes of the criminal law within the states, and the determination of questions of criminal liability under state law by a federal court of equity, are to be supported only on a showing of danger if irreparable injury 'both great and immediate.' ", citing, *inter alia*, *Spielman Motor Co. v. Dodge*, 295 U. S. 89, 95; *Beal v. Missouri Pacific R. Corp.*, 312 U. S. 45, 49, and *Williams v. Miller*, 317 U. S. 599.

In the *Spielman* case the Supreme Court refused to enjoin a criminal prosecution under Chapter 781 of the Laws of 1933 of New York, holding, by Mr. Chief Justice Hughes, that it must appear that

“The danger of irreparable loss is both great and immediate” and that the petitioner had failed to meet this test. In the *Beal* case the plaintiff railroad had sought an injunction from the District Court restraining State officers from enforcing the Nebraska Full Train Crew Law. The District Court had granted relief and the Court of Appeals for the Eighth Circuit had affirmed, 108 F. 2d 897. The Supreme Court reversed, 312 U. S. at p. 49, Mr. Justice Stone saying: “No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity which exerts its extraordinary powers only to prevent irreparable injury to the plaintiff who seeks its aid.”, citing, *inter alia*, *Terrace v. Thompson*, 263 U. S. 197, 214. Cf. *Truax v. Raich*, *supra*, and *Hague v. C.I.O.*, *supra*.

But in *A. F. of L. v. Watson*, *supra*, the Supreme Court, by Mr. Justice Douglas, pointed out that a district court of the United States might enjoin criminal prosecutions [73] based on an amendment to the Florida Constitution in effect outlawing closed-shop agreements if exceptional circumstances and great and immediate danger of irreparable loss to the petitioners, asserted by the pleadings were proved. Accordingly the judgment of the District Court was reversed and the cause remanded. Mr. Justice Douglas stated, 327 U. S. at p. 593: “But even though a district court has authority to hear

and decide the case on the merits, it should not invoke its powers unless those who seek its aid have a cause of action in equity. . . . The power of a court of equity to act is a discretionary one. . . . Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only 'to prevent irreparable injury which is clear and imminent . . . ' That is a strict test. But we think appellants satisfy it. We reach that conclusion on the basis of the allegations concerning the disruption of the collective bargaining processes and the injury to the unions and to the employers alike, if the closed-shop agreement is outlawed. As we have said, it is averred that there are about 500 contracts with Florida employers containing closed-shop agreement . . . " Cf. *Terrace v. Thompson* supra, 263 U. S. at p. 214, where Mr. Justice Butler stated, "But the legal remedy must be as complete, practical and efficient as that which equity could afford. . . . Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the Federal Constitution wherever it is essential in order effectually to protect property rights and the rights of persons against injuries otherwise irremediable; and in such case a person, who as an officer of the State is clothed with the duty of enforcing its laws and who threatens and is about to commence proceedings, either civil or criminal, to enforce such a law against parties affected, may be enjoined from such action by a federal court of equity."

In concluding that the decision of *A. F. of L. v. Watson* has a potent bearing on the disposition of the cases at [74] bar we are not unmindful of the fact that in the cited decision the Supreme Court ordered the cause remanded to the District Court with directions to retain the bill pending the final determination of designated questions of local law. The circumstances of *A. F. of L. v. Watson* are to be distinguished from the cases at bar on the ground that the Supreme Court of Hawaii in the *Kaholokula* case held the unlawful assembly and riot act to be constitutional. A most important question of local law therefore has already been decided unfavorably to the plaintiffs in the suits at bar. It should be pointed out, moreover, that the *Kaholokula* case could not be appealed to the Court of Appeals for the Ninth Circuit for the decision of the Supreme Court of Hawaii was rendered on an interlocutory appeal under the procedure prescribed by Section 9531, Revised Laws of Hawaii 1945.

Even if it were to be held, despite the circumstances, that the decision of the Supreme Court of Hawaii in the *Kaholokula* case had rendered the question of constitutionality of the unlawful assembly and riot act *res judicata* as to *Kaholokula* and his fellow defendants in the proceedings at No. 2657 in the Supreme Court of Hawaii, 37 Haw. 625, or that he or they could not contest the validity of the statute further because of the operation of a kind of estoppel, nonetheless other plaintiffs at

either No. 828 or No. 836 would not be so bound. The short of it is that the determination of local law which the Supreme Court of the United States ordered the District Court in *A. F. of L. v. Watson* to await and in the meantime to hold its hand, has already taken place in respect to the unlawful assembly and riot act. It follows that under the circumstances of the instant cases if our decision is to be effective we ourselves must pass on the validity of the unlawful assembly and riot act. While the conspiracy statute has not been tested by the Territorial Courts insofar as we are aware, since it forms the basis of only one count of the indictment at No. 2365 we have thought it proper for this court to determine [75] its constitutionality since it would be futile to cut the indictment in half or to truncate the instant proceedings.

We conclude that the prosecutions of the individual plaintiffs must be enjoined. Our conclusion is based not only on the decision of the Supreme Court in *A. F. of L. v. Watson* but also upon that in *Douglas v. Jeannette*.

First under *A. F. of L. v. Watson* our reasons are as follows: As we have stated, the unlawful assembly and riot act and the conspiracy statute of the Territory of Hawaii are unconstitutional upon their face and the impact of the two statutes as employed, and as about to be employed, by the law enforcement authorities of the Territory, is such as to disrupt immediately any substantial possibility or opportunity for genuine collective bar-

gaining between the employers of the sugar and pineapple industries and their respective employees. As we have stated the growing of pineapples and the raising of sugar cane are the two major industries of the Territory. By the very existence of the two statutes referred to as well as by reason of the manner of their enforcement by the authorities of the Territory, the scales are weighted so heavily in favor of the employer and against the employee as to render fair collective bargaining a virtual impossibility under the Labor Management Relations Act, 1947, 29 U.S.C.A. Sections 157-8. That Act is applicable in the Territory of Hawaii as we have stated. The Hawaiian statutes effect indirectly the very result which the amendment to the Constitution of Florida under consideration in *A. F. of L. v. Watson* was designed to effect directly. A court of the United States has a duty to protect interstate commerce under Section 1337 of revised Title 28, U. S. Code. A court of the United States under Section 1343 of that Title also must protect civil rights as guaranteed by the Constitution and as defined by the Civil Rights Acts. A strike properly conducted is a legitimate weapon in the armory of labor. Peaceful assembly, peaceful picketing, and freedom of speech and of assembly are equally legitimate weapons of labor. Indeed, [76] freedom of speech and of assembly are rights guaranteed to all of us by the Constitution of the United States.

All collective bargaining in the Territory of Hawaii in our opinion is substantially affected by

the two statutes as well as by the prosecutions conducted or about to be carried on thereunder. Approximately thirty thousand members of the ILWU and the union itself necessarily feel the impact of the statutes as does each employer in the sugar and pineapple industries. All labor relations in the Islands are clouded by them. On the records presently before us we think it is fair to state that equable or amicable relations between employers and employees in the Territory of Hawaii are impossible while the statutes stand. The repercussions which arise from the enforcement of these statutes of the Territory are such as to cause great and irreparable harm and damage to all labor relations in Hawaii. The danger to labor relations within the Territory is great and immediate for if the full penalty of twenty years, or comparatively heavy sentences, be imposed after trial and conviction of any substantial number of the one hundred and twenty-seven plaintiffs at Nos. 828 and 836, labor on the Islands of Hawaii may, with a measure of justification, conclude that the processes of the law have been employed to reduce its members to virtual peonage. If this were to transpire, in our opinion, many years would pass before an adequate basis for collective bargaining could arise again. We go further and state that the two statutes are of such a nature as to affect not only labor but all other persons on the Islands and constitute a two-edged weapon with which the liberty of the individual, laboring man or capitalist, may be stricken down at any time.

But there are other and equally cogent reasons why the injunctions prayed for here must issue. As was pointed out by Mr. Chief Justice Stone in *Douglas v. Jeannette*, 319 U. S. at p. 163, no person is immune from prosecution in good faith. But good faith prosecution is an essential if a person is not to be deprived of constitutional rights. The [77] qualification of good faith in a prosecution runs through the line of cases applying the doctrine of abstention. See for example *Beal v. Missouri Pacific R. Co.*, *supra*, 312 U. S. at p. 49. The words in good faith are of great importance and were intended to draw a line between bona fide prosecutions embarked upon to uphold the law and prosecutions for some ulterior purpose or motive. The motive of the prosecutor is of course not relevant to the ordinary criminal proceeding; the material questions ordinarily are whether the defendant has committed the act alleged and whether it constitutes a crime. But prosecutions for motives other than the enforcement of the law have taken place on occasion and in connection with the exercise of the discretion of a district court of the United States to restrain such criminal actions good faith is material under the Civil Rights Acts.

In this connection the following facts among others in the instant cases are pertinent: (1) (a), the mass arrests, and the very broad, indeed, the too broad field, from which the police drew the defendants in the various criminal proceedings after both the Paia and the Kaumalapau Harbor

incidents, demonstrated by the fact that the names of sixteen persons were stricken out of one of the complaints and that of ninety-three arrests made on the Island of Oahu on July 13, 1947 only one person, viz. Sibolboro, was subjected to prosecution, all other complaints being nolle prossed; (b) the naming of persons as defendants in criminal proceedings from photographs taken by the police both prior and subsequent to the occurrence of the Kaumalapau Harbor incident; (c) the fact that the police made no arrests during the course of the Paia or Kaumalapau incidents; (d) the excessive bail required of many of the plaintiffs in the instant cases; (2) the fact that Assistant Chief of Police Freitas did not read the unlawful assembly and riot act to the strikers during the Paia or Kaumalapau incidents and did not contemplate the swearing out of a complaint against any of the plaintiffs under that statute [78] until directed to do so by the prosecuting officers of Maui County; (3) the repeated selection of the unlawful assembly and riot act with its heavy penalties as vehicles for the prosecution of comparatively minor infractions of the criminal laws; (4) the haste with which the prosecuting officers of Maui County procured the second indictment of Kaholokula and others when the first indictment was held invalid by the Supreme Court of Hawaii; (5) the fact, for we have found it to be a fact, that no one has been prosecuted under the unlawful assembly and riot act except in connection with labor disputes at any

time during the life of the Territory; and (6) the fact that the maximum penalty under the unlawful assembly and riot act was increased from five years' imprisonment to twenty years' imprisonment in 1929, following the Filipino workers' strike in 1924. In view of the foregoing we are brought to the conclusion that the threatened prosecutions of the plaintiffs are not "in good faith" within the purview of that requirement as laid down in *Douglas v. Jeannette*, and that the criminal proceedings complained of are being carried on for the purpose of attack upon a labor movement rather than for the ends of justice.

In making these statements we do not accuse the Attorney General of Hawaii or the prosecuting officers of Maui County in the instant cases of lack of honor or of personal integrity. The labor movement is an unpopular one in the Hawaiian Islands and these gentlemen do no more than reflect the mores of their time and their locality. There is no personal feeling in the attitude of these defendants and we do not doubt but that they are conscientiously animated by the high desire to maintain industrial prosperity in the Territory of Hawaii. The record seems to indicate beyond peradventure, however, that the unlawful assembly and riot act has been employed as a club to beat labor and that the conspiracy statute is an apt instrument to the same end. [79]

We find that the plaintiffs' remedy at law is not and cannot be "as complete, practical and efficient

as that which equity could afford." Terrace v. Thompson, *supra*, 263 U. S. at p. 214. The damage will be done to labor relations in the Territory of Hawaii and to the plaintiffs long before the individual cases, if the plaintiffs be found guilty, can reach the Court of Appeals for the Ninth Circuit. The danger of irreparable injury is both great and immediate. In this connection we point out again that the Supreme Court of Hawaii in the Kaholokula case has held the unlawful assembly and riot act to be constitutional upon interlocutory appeal, though it held the indictment insufficient for want of certainty. That decision will bind every court short of the Court of Appeals for the Ninth Circuit and an unconstitutional statute will stand as a basis for present and further prosecutions thereunder.

In holding that injunctions against prosecution of the individual plaintiffs under the unlawful assembly and riot act and the conspiracy statute must issue we do not ignore the fact that it is our duty to follow the interpretation of constitutionality imposed on the statute by the Supreme Court of Hawaii unless, in our opinion, that interpretation is clearly erroneous. After most careful consideration of both the statute and the decision do we conclude that the interpretation of the Supreme Court was erroneous and that the unlawful assembly and riot act is unconstitutional on its face. So regarding the statute and the decision of the Supreme Court of Hawaii it is our duty to proceed as the law requires of us.

Another matter requires brief discussion. Section 266 of the old Judicial Code provided, and Section 2284 (5)⁷⁴ of revised Title 28 provides, that a three-judge court before final hearing should hold its hand and stay proceedings before it if a suit has been brought in a State court of competent jurisdiction to test the statute complained of and the State court itself has stayed prosecution under the statute pending the completion of the test. See note 74 *supra*. See *Traffic Telephone Workers' Fed. of New Jersey v. Driscoll*, 72 F. Supp. 499. It will be observed at once that the provisions of Section 2284 (5) are literally inapplicable under the circumstances of the cases at bar for no stay of the threatened or pending criminal proceedings has issued from any court of the Territory of Hawaii. The statute, therefore, not being literally applicable, can have no effect beyond the rule of comity expressed by the Supreme Court of the United States in the Jeannette case.

⁷⁴In pertinent part as follows:

“A district court of three judges shall, before final hearing, stay any action pending therein to enjoin, suspend or restrain the enforcement or execution of a State statute or order thereunder, whenever it appears that a State court of competent jurisdiction has stayed proceedings under such statute or order pending the determination in such State court of an action to enforce the same. If the action in the State court is not prosecuted diligently and in good faith, the district court of three judges may vacate its stay after hearing upon ten days notice served upon the attorney general of the State.”

As to the Defense of Unclean Hands.

The defendants contend, as we apprehend their position, that the plaintiffs seek to obtain an injunction from this court, “. . . assuring them that their acts will not be indictable as unlawful assembly and riot, so that they may with greater comfort and impunity pursue a course of unlawful conduct.”⁷⁵ We think the defendants misapprehend the plaintiffs’ contentions and the point. Lest they also misunderstand the position of this court the statements which follow are necessary. We do not condone or attempt in any manner to palliate the illegal conduct of the strikers, plaintiffs in these proceedings. But we are required to discharge our duty and we are of the opinion that that duty requires us to enjoin the prosecutions of the plaintiffs under the statutes designated for the reasons given. The doctrine of unclean hands is inapplicable here. If it were otherwise no one who had infringed an unconstitutional statute, no matter how irreparable the damage resulting from the prosecution and no matter how great and imminent the [81] dangers inherent in the statute’s enforcement, could cause a district court of the United States to enjoin prosecution thereunder. The application of the doctrine of unclean hands under the theory enunciated by the defendants would have driven the plaintiffs out of court in *A. F. of L. v. Watson* and would have had a like effect in *Traffic Telephone Workers’ Fed. of New Jersey v. Driscoll*, *supra*.

⁷⁵Defendants’ brief p. 96.

If our decision in the instant cases is upheld there remains in the armory of the Territory of Hawaii numerous criminal statutes of the kind well known to the States of the United States and adequate for the punishment of lawbreakers.

THE ATTACK ON THE JURY COMMISSIONERS AND ON THE GRAND JURIES OF MAUI COUNTY.

As to the Right of Kaholokula, et al. to Attack the Indictment Handed Down by the 1947 Maui County Grand Jury.

The complaint for violation of the unlawful assembly and riot statute against Agliam and his co-defendants was dated August 1, 1947, and Agliam and those named in the complaint with him were held for action of the grand jury on September 16, 1947. As we have stated Agliam and his co-defendants were joined as plaintiffs at No. 828 by stipulation and an appropriate order thereon. Barbosa and his co-defendants were named in a complaint based on violations of the unlawful assembly and riot act, dated July 16, 1947. Makekau and his co-defendants were named in a complaint similarly based, dated July 15, 1947. Makekau, et al., and Barbosa, et al., filed motions and challenges to the jury commissioners and to the 1947 grand jury of Maui County at Nos. 2412 and 2413 respectively in the Circuit Court of the Second Circuit of the Territory of Hawaii. The matters raised by the motions and challenges to the jury commissioners and

to the 1947 Maui County grand jury were decided by Judge Cristy on September 17, 1947, [82] while the case of Kaholokula, et al., No. 2657 in the Supreme Court of Hawaii, 37 Haw. 625, decided November 26, 1947, was still before that Court. As we have said the constitutionality and the sufficiency of the indictment handed down by the Maui County grand jury on October 30, 1946, Plaintiffs' Exhibit No. 9, were tested by the Supreme Court in the cited case. The Supreme Court of the Territory held the unlawful assembly and riot act to be constitutional but the indictment was deemed to be insufficient in that specific illegal acts of the individuals were not described therein. As has been stated Kaholokula and certain others, plaintiffs at No. 836, had been indicted by reason of the Paia incident. Kaholokula and the other defendants indicted with him made no attack on the jury commissioners and did not challenge the 1947 Maui County grand jury. They do presently attack, by the allegations of the complaint at No. 836, both the jury commissioners of Maui County and the methods used to select grand juries in that county. They offer in support of their contentions the record made before Judge Cristy (sitting vice Judge Wirtz in the Circuit Court of the Second Circuit) under the motions and challenges of Makekau, et al., and Barbosa, et al.⁷⁶ The evidence contained in

⁷⁶Pursuant to paragraph 11, stipulation 4/23/48, at our No. 828, and also paragraph 9, stipulation 4/23/48 at our No. 836.

that record will be discussed hereinafter. The points raised are substantially those set up in the complaints at our Nos. 828 and 836. The motions and challenges of Makekau, et al., and Barbosa, et al., were filed in the Second Circuit Court on or about July 28, 1947 and were subsequently amended.⁷⁷

The defendants point out that when Judge Cristy's designation was made by the Supreme Court to the Second Circuit Court, to the end that he could hear the motions and challenges referred to, it was apparent that there were involved in the Kaūmalapau Harbor incident not only [83] Makekau and those charged with him but also Barbosa and his co-defendants. This, say the defendants in the cases at bar, is "the very evident reason why the order of the Supreme Court included authorization to Judge Cristy to hear supplementary challenges and why Judge Cristy in disposing of the motions and challenges on September 18, 1947 stated that his rulings would apply to any other case lying before the grand jury."⁷⁸ But the case of Kaholokula, et al., was not then lying before a grand jury. The 1946 Maui County grand jury had handed down a true bill against Kaholokula and his co-defendants on October 30, 1946, Plaintiffs' Exhibit No. 9. Moreover, if Kaholokula,

⁷⁷We will discuss the challenges and motions as amended. Differentiation between the original motions and charges and the amendments is unnecessary and would be unprofitable.

⁷⁸See transcript of hearings before Judge Cristy p. 561.

and his co-defendants under the indictment of October 30, 1946, believed, as they apparently did, that the unlawful assembly and riot statute would be declared unconstitutional, or that the indictment would be found to be insufficient as actually transpired, there was no reason why they should have challenged the 1947 Maui County grand jury. Actually the earlier indictment had been found by the 1946 Maui County grand jury and that jury was *functus officio*. Whether or not the indictment was held to be insufficient, the life of the 1947 grand jury would expire on January 12, 1948.⁷⁹

The Kaholokula case was decided by the Supreme Court on November 26, 1947. The Territory had twenty days after the opinion was announced in which to petition for rehearing.⁸⁰ The time for filing a petition for rehearing expired therefore on December 17, 1947. But the 1947 Maui County grand jury met on December 2, 1947 and indicted Kaholokula again and with him seventy-four other persons in indictment No. 2365, including one individual not designated in the earlier indictment, Plaintiffs' Exhibit [84] No. 9. The later indictment, No. 2365, Exhibit E to the complaint at our No. 836,

⁷⁹See Section 9638, Revised Laws of Hawaii 1945. The life of the grand jury expires with the end of the term and the new term commenced in the Second Circuit on the second Monday in January, 1948, viz. January 12, 1948. See Section 9802 of the Revised Laws of Hawaii 1945.

⁸⁰See Rule 5 of the Supreme Court of Hawaii. See 36 Haw. at p. 756.

contains not only a count based on the unlawful assembly and riot act but also a count bottomed on conspiracy, third degree.⁸¹ At the time the indictment, No. 2365, was returned by the 1947 grand jury there had been no remittitur by the Supreme Court to the Second Circuit Court as has been said. The defendants' brief⁸² states in regard to this point, "The grand jury undoubtedly had a right to consider and to act upon the case, but were the plaintiffs bound to take notice that they would do so? That is the issue. We cannot foretell the ruling of the territorial court thereon, and it is not material here; they [the defendants] either were bound to take notice that the grand jury would consider the case and waived their opportunity [to challenge], or were not bound to take notice of it and can still present, by plea or motion on arraignment all contentions based on federal rights." The defendants in the instant cases cite *Territory v. Ferris*, 15 Haw. 139, for comparison. The cited case holds that a defendant charged with murder waives his right to challenge the grand jury if he does not do so prior to the time it retires even though he is held in jail at the time. Section 9812, Revised Laws of Hawaii 1945, provides that any person "held to answer a charge for a criminal offense" may challenge the panel before the grand jury is sworn. The grand jury is impaneled and sworn at

⁸¹Pursuant to Sections 11120-11130 of the Revised Laws of Hawaii 1945.

⁸²At p. 138.

the opening of the term.⁸³ The 1947 Maui grand jury could not have come into office until January 13, 1947, the second Monday in January.

Paragraph "F. Challenges," of Rule 18 of the Rules of the Supreme Court⁸⁴ as amended February 14 and [85] March 27, 1947,⁸⁵ provides, "Before the grand jury retires, . . . any person held to answer a charge for a criminal offense may challenge the panel or an individual juror for cause to be assigned to the court. All such challenges shall be tried and determined by the court." We think that the word "retires" as used in the Supreme Court rule means the first retirement by the newly impaneled grand jury after it has been charged by the court. See Section 9811 of the Revised Laws of Hawaii 1945. See such cases as *Commonwealth v. Smith*, 9 Mass. 107, and *People v. Jewett*, 3 Wend. (N. Y.) 314. *Territory v. Ferris*, *supra*, is

⁸³Sections 9810-2 of the Revised Laws of Hawaii 1945.

⁸⁴See item 7, paragraph 7, stipulation filed April 23, 1948, in No. 828, and item 3, paragraph 7, stipulation filed April 23, 1948, in No. 836. Cf. 36 Haw. at p. 763.

Section 9603 of the Revised Laws of Hawaii 1945 provides that the Supreme Court shall have "general superintendence of all courts of inferior jurisdiction. . . ." See also Section 83 of the Organic Act, 48 U.S.C.A. § 635.

⁸⁵The changes effected by the amendments seem immaterial insofar as the instant question is concerned. See Rule 18 of the Supreme Court prior to the stated amendments.

silent on this point, and we can find no pertinent Territorial authority. If we are correct in this ruling the opportunity of Kaholokula and his co-defendants to challenge the 1947 grand jury either under Section 9812 or under Rule 18 of the Supreme Court Rules elapsed long before December 2, 1947 when the indictment, No. 2365, was handed down. A chance to challenge the individual grand juror's competency as distinguished from irregularity of the drawing of the grand jury, still remained. Questions of competency, as distinguished from questions of regularity in the drawing of the grand jury, could be presented on arraignment under the indictment. Cf. *Territory v. Scully*, 22 Haw. 618, 632, explaining *Territory v. Ferris*, *supra*. In the *Scully* case it was held that a motion to quash an indictment on the ground of irregularities in selecting the list of persons to act as grand jurors, must be made before the jury was sworn. In *Territory v. Braly*, 29 Haw. 7, 8-10, the Supreme Court of the Territory considered on a plea of abatement a challenge based on alleged failure to apportion properly the citizenry for grand jury service among several precincts but the court's decision was based in fact upon the conclusion that no abuse of discretion had been demonstrated. [86]

The defendants urge that under the rule of *Carter v. Texas*, 177 U. S. 442, dealing with the exclusion by a Texas court of members of the African race from a grand jury, rights guaranteed by the

Constitution of the United States to the plaintiffs in the instant cases could be preserved by a motion to quash the indictment on arraignment. Cf. *Territory v. Ferris*, *supra*. But this raises a substantial federal question which, however, melts into the major contentions of the plaintiffs in the instant cases that they have been denied their constitutional rights.

We are of the opinion that the defendants named in the indictment No. 2365 did not have a fair opportunity⁸⁶ to challenge the 1947 Maui County grand jury and, as we have stated, had no substantial reason for believing that that grand jury would indict them on December 2, 1947; that their objections to the jury commissioners and to the constituency of the 1947 grand jury must be weighed and considered. The question then becomes: Shall this court consider on behalf of Kaho-lokula and his co-defendants under indictment No. 2365 the motions and challenges, filed by Makekau and Barbosa in the Second Circuit Court which have been made part of the records of the cases at bar by the stipulations of the parties?⁸⁷

⁸⁶As appears from the defendants' brief at p. 137: "In the arguments before the trial we frankly stated to this court that we do not know whether the plaintiffs in Civil No. 836 have had opportunity to challenge the 1947 grand jury."

⁸⁷See paragraph 11 of the stipulation of April 23, 1948, at No. 828, and paragraph 9 of the like stipulation at No. 836. Each pertinent paragraph is as follows: "It is stipulated that the record of the proceedings before the Honorable A. M. Cristy,

The defendants insist that all the pertinent evidence on this issue should be stricken out at both numbers and that this court may not consider it. They contend that we do not have the jurisdiction, i. e., power, to determine the issue whether a grand jury of the Territory has been properly [87] constituted even if it has been selected in a manner clearly prohibited by the Constitution of the United States. Cf. *Cobbledick v. United States*, 309 U. S. 323. The defendants endeavor to draw an analogy helpful to them from the federal statute relating to the removal of civil rights cases, Section 31 of the old Judicial Code, presently Section 1443 of revised Title 28, citing *Kaizo v. Henry*, 211 U. S. 146, 148, a case arising in the Territory of Hawaii, and *Andrews v. Swartz*, 156 U. S. 272, 276. It is doubtful if the cited cases retain full authority to-day in view of *Johnson v. Zerbst*, 304 U. S. 458, 468, wherein the Supreme Court held that a trial court would lose jurisdiction, i. e., the power, to try a criminal indictment, if the defendant was denied his constitutional right to assistance of counsel under the Sixth Amendment. It is the law, however, that civil rights cases may not be removed to the

including the testimony taken as transcribed by the court reporter of the Second Judicial Circuit, said transcript of record having been heretofore filed in this court, shall be deemed in evidence in this case with the same effect as if said testimony were adduced by the respective parties in this court, the entire record also being deemed in evidence before this court, subject to all legal objections not hereinabove waived." See note 76 *supra*.

federal court unless the denial of civil rights occurs by reason of provisions of a state constitution or statute. *Kentucky v. Powers*, 201 U. S. 1, 30-1; *Strauder v. West Virginia*, 100 U. S. 303, 309; and *Virginia v. Rives* (*Ex parte Virginia*), *Id.* pp. 313, 321.

But assuming, as we must by reason of Section 86 of the Organic Act, as amended, that the Territory of Hawaii stands in the same position to the United States as a State insofar as removal of causes is concerned, we are of the opinion that decisions controlling the removal of civil rights cases to the federal courts nonetheless are not persuasive here. The question presented is not whether the case of the Territory v. Kaholokula, et al., may be removed to the United States District Court for the District of Hawaii, but whether in a suit based upon the Civil Rights Acts this court may consider whether Kaholokula and his co-defendants, plaintiffs at No. 836, have been deprived of rights guaranteed to them by the Constitution of the United States by reason of the methods employed in the selection of the 1947 Maui County grand jury. We are of the opinion that the latter question is within the ambit of the powers conferred upon a district court of the United States by [88] Section 1343 of revised Title 28. See also R. S. Sections 1977 and 1979. The question before us is not how might removal be accomplished but whether the plaintiffs are being deprived of their civil rights. The question at bottom therefore is the same as that previ-

ously decided by us. But even if it were not, we nonetheless sit as a court of equity. It is well established that a court of equity, having acquired jurisdiction on adequate grounds should determine all material issues. Our decision should not be truncated. Accordingly, we hold that it is proper for this court to consider the pertinent evidence stipulated into the records at both numbers and to adjudicate the issue involved.

The Evidence Produced on the Motions and Challenges of Makekau and Others and Barbosa and Others to the Jury Commissioners and to the 1947 Maui County Grand Jury.

We state preliminarily that the provisions of the law of the Territory of Hawaii relating to "Jurors" are to be found in Sections 9791 to 9813, inclusive, of the Revised Laws of Hawaii 1945, as amended, and in Section 83 of the Organic Act, 48 U.S.C.A. Section 635. We shall not repeat all the provisions of the statutes but we point out that Section 9800 of the Revised Laws of Hawaii 1945 stated in pertinent part "That the jury commission of each circuit shall in each year make and file with the clerk of the circuit court at least ten days before the next term of court two certified separate lists of citizens to serve respectively as grand and trial jurors in the circuit court for the ensuing year. It shall select and list the names of one hundred citizens as trial jurors and fifty citizens as grand jurors . . .", and "All of such selections shall be

citizens whom the respective commissions believe, after careful investigation in each case, to be qualified and not exempt under the provisions of this chapter. If practicable, no person shall be selected who has served as a juror or grand juror within one year. [89] All of such selections shall be made without reference to the political affiliations or to the race or place of nativity of citizens, with a view to obtain lists representative of the qualified citizenry of each circuit." The last sentence quoted was amended by L. 1945, c. 163, s. 1, (Section 9800.01) to provide that "No person shall be selected and listed as a grand juror who had been so selected and listed within one year . . ." Section 2 of the statute last designated also added a requirement of three years residence in the Territory, amending Section 9791 of the Revised Laws of Hawaii 1945 to that extent. Section 9791 need not be quoted here. It is sufficient to state that it embodies in substance, the amending residence qualification aside, the provisions of Section 83 of the Organic Act, including those relating to the ability of the juror to speak English. Section 9803 provides for the drawing of the grand jury panel by the clerk of the court by lot in the usual fashion; that is to say the fifty names on the list are put into the "grand jury box" and from these names the clerk selects ". . . not less than thirteen nor more than twenty-three persons to serve as grand jurors . . ." The 1947 grand jury consisted of twenty-one persons so selected. They are the de-

fendants named as grand jurors in the complaints at Nos. 828 and 836.

It will be noted upon an examination of the testimony before this court, from the transcript of the hearings before Judge Cristy and also from a number of the exhibits that the terms "list", "grand jury", "grand jury as a whole", "panel" and "array" have been employed on occasion in a manner which creates some confusion. The three terms first quoted were generally employed to designate the list of fifty persons selected by the jury commissioners for grand jury service. The terms "panel" or "array" seemingly were used on most occasions to designate the twenty-one grand jurors drawn by lot by the clerk of the court from the list of fifty names selected by the jury commission; for example, the grand jurors named as [90] defendants in the instant occasion. Cf. the respective definitions of "panel" and "array", Bouvier's Law Dictionary, Rawle's Third Revision. In at least two instances, however, the word "panel" was used where the term "list" would have been more appropriate. See Movants' Exhibit No. 15 in the proceedings before Judge Cristy, referred to hereinafter. See also Plaintiffs' Exhibit 26.

The evidence produced on the challenges to the grand jury by Makekau, et al., and Barbosa, et al., in the Circuit Court of the Second Circuit respectively at Criminal Nos. 2412 and 2413, shows that the 1947 Maui County grand jury was not impaneled in accordance with law. This appears from

the record of the proceedings before Judge Albert M. Cristy, sitting vice Judge Cable A. Wirtz, in the Circuit Court of the Second Circuit, and made part of the record at both our numbers.⁸⁸ The court allowed but a limited review of the methods employed to select the grand jury and of the individual qualifications of the members thereof. Judge Cristy would not permit what he referred to as a "free for all" examination of the members of the panel upon voir dire. He permitted examination of individual grand jurors on voir dire only to the extent of allowing the defendants' counsel to bring out their respective business connections and general position in the community. The court was apparently of the view that a wider scope of examination of the qualifications of individual members of the panel would be irrelevant. Judge Cristy also excluded evidence which, from the nature of the offers made, would have tended to show more clearly that certain important elements of the community were precluded from serving on the grand juries of Maui County. The court, however, permitted enough evidence to come into the record to demonstrate the erroneous method employed in selecting the 1947 Maui County grand jury. [91]

There was evidence which we believe to be credible and from which we find that 84% of the

⁸⁸The challenges are also part of the plaintiffs' bill of particulars which has been made a part of both complaints. See the references to the stipulations in note 87, *supra*.

persons who were selected and listed for grand jury service in 1947 came from the ranks of the employer-entrepreneur group and their salaried (non-labor) employees. The record demonstrates also that all other groups in the community, including labor, had approximately but a 16% representation on the 1947 grand jury list.

The word "haole" has been much employed throughout the testimony and, as we stated at an earlier point in this opinion, a satisfactory definition of it is hard to encompass. A haole was defined by a witness (see note 11, *supra*) as a person of mainland American or of northern European stock, not a person of Portuguese, Spanish or Puerto Rican descent. To this we added the gloss of Adams' definition (see note 13, *supra*) describing the haole as a class of persons of superior economic and social status. As indicated previously we accept this composite definition. The dominant position of the haole in the economic life of the Territory of Hawaii has been testified to repeatedly in the instant case and is also fully borne out by such authorities as Burrows⁸⁹ and Lind.⁹⁰ While we think that the record in the instant cases demon-

⁸⁹See "Hawaiian Americans", by Edwin G. Burrows, Yale University Press, 1947, pp. 1 to 95. See note 14 *supra*.

⁹⁰See "An Island Community, Ecological Succession in Hawaii", by Andrew W. Lind, the University of Chicago Press, 1938 at pp. 112 and 255. This book was introduced in evidence in the proceedings before Judge Cristy. See note 14 *supra*.

strates that the haole group and the employer-entrepreneur group in the Islands should be deemed to be almost co-extensive, we shall not so treat them for the purposes of the question now under discussion and will employ the term "haole" as defined in this paragraph.

Employing that definition we find that though the haole group comprised but about 3.6% of the population of Maui County, the 1947 Maui County grand jury list nonetheless contained the names of twenty-one haoles or 42% of the list. On the other hand there were only six [92] laboring men named on the grand jury list, or a total of 12%. Cf. Movants' Exhibits Nos. 7 and 9. But male laborers in Maui County comprised approximately 79% of the total male population of that County. Again see Movants' Exhibit No. 9. Only laborers are named in the indictment at No. 2365 and in the criminal complaints.

It should be observed that the percentage of Koreans, Hawaiians, Puerto Ricans and Filipinos on the list was zero. There were over 10,000 persons of Filipino descent in Maui County in 1946 and 1947 but the 1947 grand jury list contained no Filipinos. The evidence also shows that Filipinos constitute the second largest national group in the Territory. While Filipinos who had not been engaged in the military service of the United States could not become naturalized citizens until 1946⁹¹

⁹¹See Act of July 2, 1946, 8 U. S. C. A. Sections 703, 724.

nonetheless the registry of voters at the election which was held on November 5, 1946⁹² demonstrates that many, more than one hundred, male Filipinos were entitled to vote at that election. It will be noted that the provisions of Section 9791 of the Revised Laws of Hawaii 1945 do not require that to be eligible for jury service that the individual must be a registered voter but only that he possess the qualifications for registration as a voter. Questionnaires⁹³ were submitted to numerous Filipinos along with other members of the community whom it was contemplated might be called for jury service, and though there were numerous Filipinos who were qualified⁹⁴ none was called to serve. There were a number of Filipinos indicted under the indictment at No. 2365 and named in the criminal complaints hereinbefore referred to. These include at No. 828, Diego Barbosa, Victor Degamo, and Basilo Arruiza; at No. 836, Leocadio Baldovi, Calixtro Cason and Juan Hara.

Statistics are sometimes most misleading when they seem the clearest and we would hesitate to base our decision upon them. Filipinos represent about 35% of the male population of Maui County though comparatively few are citizens, and therefore it

⁹²These lists were filed with the clerk after the termination of the hearings pursuant to permission granted by the court. They are Plaintiffs' Exhibits 22-A and 22-B.

⁹³See Plaintiffs' Exhibits Nos. 23 and 24.

⁹⁴These included Patrick Ortello, Vincente Engorring and Salvadore Seno.

might be argued that it was by pure inadvertence that all of them were excluded from grand jury duty; that the haole group are in fact better educated than the average citizen of Hawaii, and that therefore, since the jury commissioners are required by law to make a "careful investigation in each case",⁹⁵ their selections naturally include more of the better educated members of the community. In this connection we point out again that Section 83 of the Organic Act requires that a juror must be able "understandingly [to] speak, read, and write the English language . . .". The testimony received by Judge Cristy, however, makes it clear, statistics aside, that the exclusion of certain groups of the community was deliberate and intentional.

Pursuant to Section 9799, Revised Laws of Hawaii 1945, the jury lists are made up by three jury commissioners, two of whom are appointed by the judge of the circuit court, the third commissioner being *ex officio* the judge himself. Augustine Pombo, one of the jury commissioners, had served as such for an extended period of time, having had fourteen years of consecutive service with the exception of one year, 1945. The other jury commissioner was Claude E. Chatterton. Judge Wirtz, Mr. Pombo and Mr. Chatterton chose the persons comprising the list of the 1947 Maui County grand jury. When Mr. Pombo was asked why there never had been a

⁹⁵See Section 9800, Revised Laws of Hawaii 1945, and Section 83 of the Organic Act, 48 U. S. C. A. Section 635. See also Sections 9799 and 9803, Revised Laws of Hawaii 1945.

Filipino on the "Grand Jury" he replied candidly, "We just have a lot of other men a lot better."^{96,97} As to the number of haoles on the grand jury list Mr. Pombo's statements were equally pointed and conclusive and admit of no misunderstanding. He testified in effect that he picked haoles because he wanted to give them something to do "... if they want a chance to run the country ...".⁹⁸ The sub-

⁹⁶See p. 312 transcript of proceeding before Judge Albert M. Cristy.

⁹⁷There is a Filipino on the 1948 Maui County grand jury.

⁹⁸See Id. at p. 290. Mr. Pombo testified as follows:

"The Court: Did you pick them because they were haoles?

Witness [Pombo] No. I pick them because I want to give them something to do—if they want a chance to run the country—.

The Court: Did you pick them because of their fairness?

Witness: Because they are fair. They are in court—they have to be fair. There is another jury—in case it don't go right on the Grand Jury, the trial jury is waiting for them.

Mr. Resner [Counsel for the defendants in the proceedings in the Circuit Court of the Second Circuit]: What did you mean a moment ago—you said they wanted a chance to run the country?

A. Well, they do run the country.

Q. How do you mean that?

A. The majority—lots of these—the Baldwins—they own the place.

Q. I see.

A. And if they want to run politics, just as well give them something to do in courts. They can't run it in here because the population getting too independent."

stance of Mr. Pombo's testimony is that haoles were placed on the grand jury so that they might have an opportunity to run the country.

Mr. Pombo's standard of selecting jurymen was also made plain when he stated: "Well, we picked men—majority of them with better education. They are in business in the community." He was then asked, "Was it your feeling that a man in business would be better qualified than a man out of business?" He replied, "He has got a better head on him."⁹⁹

Neither of the other two jury commissioners denied the accuracy of Mr. Pombo's testimony respecting this basis or standard of selection in any particular. What Mr. Pombo said respecting methods of selecting persons to comprise the grand jury list seems to us to be conclusive in proving deliberate exclusion of Filipinos from grand jury service as well as a deliberate weighting of the grand jury list in favor of haoles and against the laboring men of the community. We so find. [95]

Judge Wirtz testified that the selection of jurors was made from persons whom the jury commissioners knew, individuals with whom they had had personal contact on a business or social basis.¹⁰⁰ Judge Wirtz' testimony respecting the personal knowledge of the jury commissioners of the persons selected by them to form the list was corroborated

⁹⁹See *Id.* at p. 318.

¹⁰⁰See *Id.* at pp. 161-162.

by Mr. Pombo and to some extent also by Mr. Chatterton.¹⁰¹ See *Smith v. Texas*, 311 U. S. 128, 132.

Section 9800, Revised Laws of Hawaii 1945, provided in respect to the selection of jurors, both grand and petit, that, "If practicable, no person shall be selected who has served as a juror or grand juror within one year." Movants' Exhibit No. 15 in the proceedings before Judge Cristy on the challenges to the jury commissioners and to the 1947 grand jury of Maui County by Makekau, et al., and Barbosa, et al., Criminal Nos. 2412 and 2413, Circuit Court, Second Circuit, Territory of Hawaii, covers the service of members of the Maui County grand jury panels from 1942 to 1947, inclusive. The exhibit, however, was so qualified by the testimony of Judge Wirtz¹⁰² that it appears that the term "service" as employed in the exhibit meant listing on the grand jury lists rather than actual service on a grand jury. Assuming, as we think we must, that the terms "service" and "served" as employed in the exhibit mean being named on a grand jury list, rather than actual service on a grand jury, i. e., being called and sworn to serve thereon, the exhibit is enlightening nonetheless as to the methods employed in constituting grand jury lists in Maui County for it demonstrates that 54 individuals were listed to serve for 141 years of a total of 300 man-years (50 men on each jury list for 6 years) during the period indicated. It does appear, however, from

¹⁰¹See *Id.* at pp. 354 et seq.

¹⁰²*Id.* at p. 242-245.

the testimony taken before Judge Cristy that there was no person on the 1947 grand jury list who had been listed as a grand juror in Maui County in 1946.

Section 9800 stated, prior to amendment, that if practicable no person should be selected who had served as a juror within a year. Section 9800, as we have said, was amended by L. 1945, c. 163, s. 1, (Section 9800.01) to provide that no person should be selected and listed as a grand juror who had been so selected and listed within one year and that no person should be selected and listed as a trial juror who had been so selected and listed within one year. The law as amended became effective on May 14, 1945, subject to a qualification not here pertinent. Despite these provisions, however, it will be observed from Plaintiffs' Exhibit No. 26 that at least seven persons (at least six of whom were haoles) who were listed on the 1945 Maui County grand jury list were listed again on the 1946 list. It will be remembered that the 1946 grand jury returned the first indictment, Plaintiffs' Exhibit No. 9, against Kaholokula and others based on the unlawful assembly and riot act of the Territory of Hawaii. The names of the seven men to whom we have referred are H. B. Benner, F. G. Bush, A. J. Collins, Wm. Dickson, F. J. S. Gay, J. W. Hoxie, and E. F. Sabin. The 1946 indictment of Kaholokula, et al., was quashed by order of the Supreme Court of Hawaii following its opinion in *Territory of Hawaii v. Kaholokula, et al.*, 37 Haw. 625, and the facts stated have no specific bearing on the 1947 grand jury list. They are illuminating, however, in view of what we have previously

stated in respect to the handling of grand jury lists in the Circuit Court, Second Circuit, and they are pertinent insofar as they serve to corroborate Pombo's testimony set out in note 98, *supra*.

Section 83 of the Organic Act provides *inter alia* that ". . . all juries shall be constituted without reference to the race or place of nativity of the jurors." Yet the questionnaires in evidence¹⁰³ submitted to each prospective juror in every instance require a statement as to where the individual was born and the nationality of both his father and mother. True, "race" is not "nationality" if the two words be employed in a strict ethnological sense but commonly the word "race" is used to denote "The descendants of a common ancestor; a family, tribe, people, or nation . . ."¹⁰⁴ We are of the opinion that the questions to which we have referred were in fact directed to "race" as that word is used in the ordinary or common sense and, therefore, indirectly at least, referred to "place of nativity" in derogation of Section 83 of the Organic Act. The questionnaires seem to have been employed for no purpose within the law insofar as the 1947 grand jury was concerned.. See Section 9791, Revised Laws of Hawaii 1945.

In view of the foregoing we conclude that the 1947 Maui County grand jury was constituted illegally. The provisions of the Fifth Amendment

¹⁰³Plaintiffs' Exhibits 23 and 24.

¹⁰⁴See Webster's New International Dictionary, 2nd Edition.

to the Constitution of the United States apply to the Territory of Hawaii. See *Hawaii v. Mankichi*, 190 U. S. 197, 211. Cf. *Andres v. United States*, *supra*, 333 U. S. at p. 748. The exclusion of Filipinos from grand jury service for the reason given by *Pombo* falls clearly within the prohibition of that line of cases beginning with *Strauder v. West Virginia*, 100 U. S. 303, and running through *Smith v. Texas*, *supra*, to *Patton v. Mississippi*, 332 U. S. 463. There was also, as we have indicated, a deliberate substantial exclusion of wage earners and a deliberate substantial weighting of the grand jury list in favor of "businessmen", in the instant cases, really the employer-entrepreneur which includes the haole group of Maui County. This also is prohibited. In *Thiel v. Southern Pacific Co.*, 328 U. S. 217, 220-4, the Supreme Court by Mr. Justice Murphy stated: "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors [98] shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society.

Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury. . . . Wage earners, including those who are paid by the day, constitute a very substantial portion of the community, . . . a portion that cannot be intentionally and systematically excluded in whole or in part without doing violence to the democratic nature of the jury system. Were we to sanction an exclusion of this nature we would encourage whatever desires those responsible for the selection of jury panels may have to discriminate against persons of low economic and social status. We would breathe life into any latent tendencies to establish the jury as the instrument of the economically and socially privileged. That we refuse to do."

Compare *Fay v. New York*, 332 U. S. 261. In the cited case the Supreme Court held that consistent with due process of law required by the Fourteenth Amendment a State could try a defendant charged with a crime by a special or "blue ribbon" jury. Mr. Justice Jackson distinguished carefully, however, between State and federal juries and the decisions respecting each. See 332 U. S. at pp. 284 et seq., and compare *Moore v. New York*, 333 U. S. 565.

It is clear that the Territory of Hawaii and its Legislature, Executive Officers and Judiciary, can exercise only the powers delegated to them by Con-

gress, and that Congress cannot deny the right of trial by jury as guaranteed by the Sixth Amendment or indictment by a grand jury under the Fifth Amendment. The constitutional guarantee requires that no group in the community shall be excluded deliberately from jury service and that a grand jury panel shall constitute a fair cross-section of the country or locality from which it is drawn. The 1947 Maui County grand jury was constituted in disregard of these fundamental principles, as well as of others of importance embraced in the local law as we have indicated.¹⁰⁵ We, therefore, have no

¹⁰⁵The plaintiffs assert as another ground of challenge to the 1947 Maui County grand jury that no women were included. Put briefly, the argument made by the plaintiffs runs as follows: Section 83 of the Organic Act, 48 U. S. C. A. Section 635 provides that "... no person who is not a male citizen of the United States ... shall be a qualified juror or grand juror in the Territory of Hawaii." See also the similar provision of Section 9791, Revised Laws of Hawaii 1945. By the Act of June 26, 1930, 46 Stat. 818, the qualifications of electors of the Territory was amended by striking from Section 60 of the Organic Act, 48 U. S. C. A. Section 617, the word "male" so that women are now qualified electors in the Territory. The Nineteenth Amendment to the Constitution of the United States, effective August 26, 1920, provides that "The right of the citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of sex." The plaintiffs contend that with the adoption of the Amendment "... women became qualified jurors since the qualifications for jury service existing as of that time were the same as for electors." Cf. *Ballard v. United States*, 329 U. S. 187, and see *State v. Walker*, 192

hesitancy in enjoining the prosecution of the individual plaintiffs under indictment No. 2365, even if that prosecution was not to be restrained for the reasons stated under the earlier heading of our opinion.

The plaintiffs also charge the jury commissioners with bias and prejudice and point out that Mr. Pombo, Mr. Chatterton and Judge Wirtz are still in office. This court would be without power to remove them from office, even if we were of the opinion that the facts warranted such action. The challenges to individual members of the grand jury were not sufficiently developed in the evidence possibly because of the exclusion of evidence by the Circuit Court of the Second Circuit which tried the proceeding. Under these circumstances there can be no point in further discussion. [100]

Iowa 823, 185 N. W. 619 and *State v. Hickman*, 195 Iowa 765, 791, 193 N. W. 21.

But the provisions of the Nineteenth Amendment guarantee to women who are citizens of the United States only the right to vote. Section 83 of the Organic Act, 48 U. S. C. A. Section 635, has not been amended, that statute still providing that jurors shall be male citizens. Section 9791, Revised Laws of Hawaii 1945, as amended, follows in respects here pertinent, the language of Section 83 of the Organic Act. The enlargement of the group of electors of the Territory by adding women thereto by statutory enactment pursuant to the mandate of the Nineteenth Amendment cannot automatically qualify women as jurors in the territorial courts of Hawaii. The point asserted by the plaintiffs is lacking in merit.

RESPECTING THE QUALIFICATIONS OF
CERTAIN PLAINTIFFS TO MAINTAIN
SUIT AND QUESTIONS OF MISJOINDER,
OR LACK OF CAPACITY OF CERTAIN
DEFENDANTS TO BE SUED.

As we have indicated we entertain no doubt of the right of the individual plaintiffs, who are defendants in the various criminal proceedings which we have referred to, to maintain the suits at bar under the Civil Rights Acts. So much we think is clear, but do the ILWU, Kawano at No. 828 and Rania at No. 836, possess the right to maintain suits?

The Court of Appeals for the Third Circuit in the Hague case, *supra*, 101 F. 2d at p. 790, for the reasons therein stated, held that unincorporated associations, labor unions, were proper parties and possessed the capacity to conduct in the interests of their respective members a suit based on the Civil Rights Acts. Mr. Justice Roberts in his opinion in *Hague v. C. I. O.*, *supra*, 307 U. S. at p. 514, disagreed. Basing his opinion on the privileges and immunities clause of the Fourteenth Amendment, he pointed out that "Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for 'citizens of the United States.' Only the individual respondents may, therefore, maintain this suit." While this opinion is entitled to great weight we think that the rights guaranteed by the First Amendment are protected from abridgment by a

State by virtue of the due process clause of the Fourteenth Amendment. See the opinion of Mr. Justice Stone in the *Hague* case, and *Saia v. New York*, 334 U. S. 558. The privileges and immunities secured to citizens against encroachment by the States under the Fourteenth Amendment are substantially identical, insofar as the instant cases are concerned, with those guaranteed to any individual against impairment by the federal government under the First Amendment. We can perceive no reason, in the light of history, why an unincorporated association should not be held to be "a person" within the meaning of the Fifth or Fourteenth Amendment. Moreover, in *A. F. of L. v. Watson*, *supra*, the Supreme Court seemed to entertain no doubt of the capacity of the union to maintain a suit to test the constitutionality under the Federal Constitution of an amendment to the Constitution of Florida. It may have been argued in the cited case, as in effect it was argued in the instant cases, that the interest of the Union was too remote to give it *locus standi*. See 327 U. S. at pp. 582, 587. Cf. *Grosjean v. American Press Co.*, *supra*, 297 U. S. at p. 244. But in any event the decision in *A. F. of L. v. Watson* is governing here and we hold that the ILWU is entitled to maintain the instant suits as a party plaintiff. This is so whether the suit be maintained as a true class action under Rule 23 (a) (1) of the Federal Rules of Civil Procedure, made applicable in the District Court of the United States for the District of Hawaii by Section 86a of

the Organic Act, 48 U. S. C. A. Section 646, pursuant to Section 1337 of revised Title 28, United States Code, or under Rule 23 (a) (3), as a spurious class suit to redress the deprivation of civil rights under Section 1343 of revised Title 28, United States Code. See *Deckert v. Independence Corp.*, 311 U. S. 282. Accordingly the motions to dismiss it as a party will be denied.

The defendants have made like motions to dismiss as to Kawano and Rania who, as has been stated, have sued as members and officials of the ILWU as well as individually. Their representative statuses are clear and it is unnecessary for Kawano at No. 828 to rely for a representative capacity on his presidency of the now defunct Territorial Council of the ILWU. We think that both of these individuals are entitled to maintain the representative actions in which they appear as plaintiffs. See Rule 23 (a) (3) of the Federal Rules of Civil Procedure. See *United Mine Workers v. Coronado Co.*, 259 U. S. 344, 385; *United States v. White*, 322 U. S. 694. Cf. *Montgomery Ward & Co. v. Langer*, 168 F. 2d 182, 187. The motions to dismiss as to Kawano and Rania will be denied.

As to the Territorial Council of the ILWU, a plaintiff at No. 828, since it was no longer in existence at the time the cases were tried, it will be dismissed as a plaintiff.

A number of the defendants have moved to dismiss on the ground that no cause of action has been stated as to them or on the ground of misjoinder or

for other reasons. Judge Cable A. Wirtz has been sued individually as a Circuit Court Judge and as Jury Commissioner of the County of Maui, and Messrs. Pombo and Chatterton have been sued both individually and as Jury Commissioners of Maui County. The 1947 Maui County grand jury like that of 1946 is now *functus officio*. This court has no power over Judge Wirtz or over Mr. Pombo or Mr. Chatterton as jury commissioners as we have already indicated. We cannot undertake to govern their future actions by prescient decrees. The relief sought against Judge Wirtz seems to be sought solely against him as a jury commissioner.¹⁰⁶ The prayers of the respective complaints do not seek to restrain him in any other way. It follows that no relief has been sought against these defendants either individually or otherwise which can be granted by this court. Accordingly they will be dismissed as defendants.

What has been said respecting Judge Wirtz and the two other jury commissioners is true in substance as to the twenty-one grand jurors who comprised the 1947 Maui County grand jury and who are named as defendants both individually and as grand jurors. The work of that grand jury is over and done and its members have been discharged. There is no basis for present injunctive relief against them or any of them. Accordingly they will be dismissed as defendants. We note parenthetically

¹⁰⁶See paragraph XI of the Complaint at No. 828 and paragraph X of the complaint at No. 836.

that none of the individual grand jurors at No. 836 was served with process. This constitutes an additional ground for the dismissal of the suit at No. 836 as to them.

The Honorable Ingram M. Stainback has been named as a defendant both individually and as Governor of the [103] Territory of Hawaii. Section 67 of the Organic Act, 48 U.S.C.A. Section 532, states that "The governor shall be responsible for the faithful execution of the laws of the United States and of the Territory of Hawaii within the said Territory . . .". Section 9572, Revised Laws of Hawaii 1945, provides, ". . . the [Judiciary] department and the several judges and other judicial officers thereof shall in all respects be independent of both the executive and legislative departments. The governor shall have no power to interfere with, alter or overrule any order, writ, judgment or decision of any court, judge, or other judicial officer, except in the exercise of the power to grant reprieves and pardons in pursuance of law." If there be a conflict between the provisions of Section 67 of the Organic Act and Section 9572 of the Revised Laws of Hawaii 1945, it is unnecessary to resolve it for there is not an iota of evidence to prove that Governor Stainback had any connection with any of the prosecutions complained of. Accordingly the complaints will be dismissed as to him for want of equity.

Walter D. Ackerman, Jr., has been sued individually and as Attorney General of the Territory of

Hawaii. It is contended that he was appointed to office after the happening of the events complained of and therefore should not be held as a party defendant. It should be noted, however, that Mr. Ackerman took office on October 14, 1947, and Joseph Kaholokula, et al., were indicted (second indictment) December 2, 1947. The relief which we shall grant, however, will be injunctive in its nature and the laws of the Territory of Hawaii require that the Attorney General "... shall appear for the Territory personally or by deputy, in all courts of record, in all cases criminal or civil, in which the Territory may be a party, or be interested, and may in like manner appear in the district courts in such cases." Section 1501, Revised Laws of Hawaii 1945. Section 1502, Revised Laws of Hawaii 1945, provides inter alia, that the Attorney General "... shall be vigilant and active in detecting offenders against the laws of the Territory [104] and shall prosecute the same with diligence ...". In view of all the circumstances it would be improper to dismiss Mr. Ackerman as a party defendant. Accordingly the motions to dismiss as to him will be denied.

E. R. Bevins has been sued individually and as County Attorney for the County of Maui, and Wendell F. Crockett, Deputy County Attorney of Maui County, has also been sued individually and as Deputy County Attorney. By Section 6271, Revised Laws of Hawaii 1945, Mr. Bevins is made a deputy to the Attorney General for the purposes of law enforcement, and Mr. Crockett is Mr. Bevins'

deputy. They are properly in the cases as defendants and must remain. They have moved to dismiss the complaints on the ground of lack of equity. The motions will be denied.

Jean Lane has been sued at No. 828 individually and as Chief of Police of Maui County. As the chief law enforcement officer of that County he is properly a party to the proceedings. See Sections 6472-4, Revised Laws of Hawaii 1945. Accordingly the motion to dismiss as to him will be denied.

The motions heretofore made in the cases for more definite statements, to strike the complaints, to dismiss the actions and for summary judgments, were denied at preliminary stages for what the court deemed to be sufficient reasons and in order that these long pending litigations might be proceeded with promptly. Thereafter, these motions were renewed at the suggestion of the court and were taken under advisement. They will now be denied.

All motions made by the parties to strike testimony or documentary evidence will be denied.

All other points raised by the respective parties have been considered by the court but require no discussion. [105]

CONCLUSION

Decrees will be entered at Nos. 828 and 836, *mutatis mutandis*, in accordance with the relief to be granted under this opinion to the respective parties and movants, and, in particular adjudging the

unlawful assembly and riot act and the conspiracy statute of the Territory of Hawaii to be void as unconstitutional and restraining the defendants Ackerman, Bevins, Crockett, and Lane and their respective agents and deputies and their successors in office from proceeding with the prosecution of the individual plaintiffs as designated herein under any complaint or indictment based on the unlawful assembly and riot act or the conspiracy statute of the Territory of Hawaii. The decrees will be so framed that the benefits thereof shall inure to the ILWU, and to Kawano and Rania in their respective representative capacities.

We believe that all necessary findings of fact and conclusions of law are contained in this opinion as contemplated by Rule 52 (a) of the Federal Rules of Civil Procedure.

Decrees may be submitted.

/s/ JOHN BIGGS, JR.,

Circuit Judge,

/s/ DELBERT E. METZGER,

Chief Judge,

/s/ GEORGE B. HARRIS,

District Judge.

[Endorsed]: Filed Dec. 27, 1948.

[Title of District Court and Causes.]

Before: Biggs, Circuit Judge, Metzger, Chief Judge, and Harris, District Judge.

ORDER

And Now, to Wit, this 18th day of January, 1949,

It Is Ordered that the opinion filed in the above entitled cases on December 27, 1948, be and the same hereby is amended by striking therefrom note 59 in toto and substituting in lieu thereof the following:

“59. It may be asserted that the District Court for Hawaii when it sits en banc may not be comprised of more than two judges since Section 133 of revised Title 28 provides, as did Section 86 of the Organic Act, for only two district judges in Hawaii. Such a limitation in our opinion does not exist. Section 132(b) of revised Title 28 provides, it is true, that each district could shall consist of the district judges for the district in active service. But that subsection also provides that, “* * * judges designated or assigned shall be competent to sit as judges of the court.’ The two judges sitting in this case with the Chief Judge of the District Court were thus designated or assigned and comprise a court of three judges sitting en banc.

“The other District Judge for Hawaii did not sit. This fact does not prevent this tribunal from exercising jurisdiction in the instant cases for it is a rule of general application that the death, disqualification or absence of a judge will not deprive the remaining judges of the court of authority to hold court and to adjudicate cases provided that the

number of the court is not reduced below that legally required for the transaction of business. See 14 Am. Jur., Courts, Section 58, p. 282; 21 C.J.S., Courts, Section 183(b), p. 294, and the authorities cited therein. See also the opinion of Mr. Chief Justice Marshall in *Pollard v. Dwight*, 8 U.S. 251, 255-6; *Frank v. Bayuk*, 322 Pa. 282, 284, 185 A. 705, 706; *Zimmerman v. Pennsylvania R. Co.*, 293 Pa. 264, 266, 142 A. 220; *In re McCormick's Contested Election*, 281 Pa. 281, 285, 126 A. 568, 570; *Cowan v. Murch*, 97 Tenn. 590, 601, 37 S.W. 393, 396; and *Long v. State*, 59 Tex. Crim. Rep. 103, 116, 127 S.W. 551, 558. By Section 132(c) of revised Title 28, a quorum of the United States District Court for the District of Hawaii consists of but one judge. Section 132(b) seems to dispose of any possible doubt respecting the authority of the three judges shown on this opinion to sit en banc in the instant cases and to adjudicate the issues presented.”;

By striking the name “Zachariah” from note 68 on page 64 and substituting in lieu thereof the name “Zechariah”;

By striking out the word “vehicles” in the third line on page 79 and inserting in lieu thereof the words “the vehicle.”

/s/ JOHN BIGGS, JR.,

Circuit Judge.

/s/ DELBERT E. METZGER,

Chief Judge.

/s/ GEORGE B. HARRIS,

District Judge.

[Endorsed]: Filed Jan. 18, 1949.

In the United States District Court for the
District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a Voluntary,
Unincorporated Association and Labor Union,
et al,

Plaintiffs,

vs.

WALTER D. ACKERMAN, Jr., Individually and
as Attorney General of the Territory of Ha-
waii, et al,

Defendants.

MOTION SUGGESTING THE ABATEMENT
OF THE ACTION AS TO THE DEFEND-
ANTS E. R. BEVINS, INDIVIDUALLY
AND AS COUNTY ATTORNEY FOR THE
COUNTY OF MAUI, AND WENDELL F.
CROCKETT, INDIVIDUALLY AND AS
DEPUTY TO THE COUNTY ATTORNEY
FOR THE COUNTY OF MAUI, AND FOR
THE DISMISSAL OF THE ACTION AS TO
THEM

Comes now Walter D. Ackerman, Jr., Attorney
General of Hawaii, and hereby respectfully sug-
gests to the Court that this action has abated as to
the defendants E. R. Bevins, individually and as
County Attorney for the County of Maui, and Wen-
dell F. Crockett, individually and as deputy to the

County Attorney for the County of Maui, for the reason that said defendants ceased to hold office as of January 3, 1949, and the action has become moot as to them.

Wherefore, this defendant moves the Court that in its decree herein the action be dismissed as to said defendants Bevins and Crockett, on the ground that it has become moot as to them.

This motion is based on the affidavit hereto attached and on all of the proceedings herein.

Dated at Honolulu, T. H., this 18th day of January, 1949.

/s/ WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii.

To Bouslog and Symonds, Attorneys for Plaintiffs, 209 Terminal Building, Honolulu, T. H.

Please take notice that the above motion will be presented to the Court for disposition upon the settlement of the decree herein.

Dated at Honolulu, T. H., this 18th day of January, 1949.

/s/ WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii.

Territory of Hawaii,
City and County of Honolulu—ss.

Walter D. Ackerman, Jr., being first duly sworn, deposes and says:

That he is now and has been since October 14, 1947, the duly appointed, qualified and acting Attorney General of Hawaii.

That in the County of Maui a new term of office for county officers commenced on January 3, 1949, in accordance with the laws of the Territory of Hawaii.

That in the 1948 elections the then incumbent County Attorney, E. R. Bevins, did not run for reelection to the office of County Attorney. That Harold L. Duponte was duly elected as County Attorney for the County of Maui and took office on January 3, 1949. That Thomas Ogata is the only deputy of said Harold L. Duponte, County Attorney for the County of Maui, and that as of January 3, 1949, Wendell F. Crockett ceased to hold the office of deputy county attorney for the County of Maui.

/s/ WALTER D. ACKERMAN, JR.

Subscribed and sworn to before me this 18th day of January, 1949.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: June 30, 1949.

[Endorsed]: Filed Jan. 20, 1949.

[Title of District Court and Cause.]

ORDER

And Now, to wit, this 23rd day of February, 1949, it appearing from the motion and affidavit of the Honorable Walter D. Ackerman, Jr., Attorney Gen-

eral of the Territory of Hawaii, filed herein on January 20, 1949, that the Honorable E. R. Bevins, sued herein as County Attorney of the County of Maui, and the Honorable Wendell F. Crockett, sued herein as Deputy County Attorney of the County of Maui, Territory of Hawaii, ceased to hold office on or about January 3, 1949, and that the Honorable Harold L. Duponte was elected as County Attorney of the County of Maui and took office as such on or about January 3, 1949, and that the Honorable Thomas Ogata took office as Deputy County Attorney of Maui County on or about the same day, it is

Ordered that the Honorable Harold L. Duponte, County Attorney of the County of Maui and the Honorable Thomas Ogata, Deputy County Attorney of the County of Maui, Territory of Hawaii, shall show cause, if any there be, why they should not be substituted respectively vice the Honorable E. R. Bevins, formerly County Attorney of the County of Maui, and the Honorable Wendell F. Crockett, formerly Deputy County Attorney of the County of Maui, as parties defendant, either individually or in their respective capacities as County Attorney of the County of Maui and Deputy County Attorney of the County of Maui, or as parties defendant both individually and as County Attorney of the County of Maui and Deputy County Attorney of the County of Maui, respectively, or added as parties defendant, as indicated, in the above-entitled cause, to the end that they or either of them may

not be made subject to the decree to be issued by this court pursuant to its opinion filed herein on December 27, 1948, upon such terms and conditions as this court may deem just and proper, and it is

Further Ordered that the parties to this proceeding as named in the title of this case shall also show cause, if any there be, why the substitutions or additions of parties defendant referred to in the last foregoing paragraph of this order should not be made as indicated, and it is

Further Ordered that the Honorable Harold L. Duponte and the Honorable Thomas Ogata and the parties to this proceeding as named in the title of this case shall make answer to this rule on or before March 10th, 1949, and it is

Further Ordered that service of this rule to show cause shall be made upon the Honorable Harold L. Duponte, County Attorney of the County of Maui, the Honorable Thomas Ogata, Deputy County Attorney of the County of Maui, and the Honorable Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, upon Jean Lane, Chief of Police of the County of Maui, upon the Honorable E. R. Bevins, formerly County Attorney of the County of Maui, and upon the Honorable Wendell F. Crockett, formerly Deputy County Attorney of the County of Maui, by serving a certified copy of this rule to show cause upon each of them in the manner prescribed by Rule 4(c) of the Federal Rules of Civil Procedure, and it is

Further Ordered that service of this rule to show cause shall be made upon all the parties to this proceeding as named in the title of this case (including the Honorable Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, upon Jean Lane, Chief of Police of the County of Maui, the Honorable E. R. Bevins, County Attorney of the County of Maui, and the Honorable Wendell F. Crockett, Deputy County Attorney of the County of Maui, service as prescribed in this paragraph upon the defendants Ackerman, Lane, Bevins and Crockett, being in addition to that prescribed as to them by the last foregoing paragraph of this order) by serving the same upon their respective counsel of record in this cause in the manner prescribed by Rule 5(b) of the Federal Rules of Civil Procedure, and it is

Further Ordered that upon answers being made as directed that this cause shall be set down for hearing as, when and if, the court shall direct.

/s/ JOHN BIGGS, JR.,

Circuit Judge.

/s/ DELBERT E. METZGER,

Chief Judge.

/s/ GEORGE B. HARRIS,

District Judge.

RETURN ON SERVICE OF WRIT

United States of America,
District of Hawaii—ss.

I hereby certify and return that I served the annexed Order on the therein-named Walter D.

Ackerman, Jr., by handing to and leaving a true and correct copy thereof with the said Walter D. Ackerman, Jr., personally at the Executive Bldg., Honolulu, T. H., in said District on the 24th day of February, A. D. 1949.

OTTO F. HEINE,

U. S. Marshal.

By /s/ GEORGE E. BRUNS,
Deputy.

RETURN OF SERVICE OF WRIT

United States of America,
District of Hawaii—ss.

I hereby certify and return that I served the annexed Order on the therein-named H. L. Duponte, W. F. Crockett, Jean R. Lane, E. R. Bevins and Thomas Ogata by handing to and leaving a true and correct copy thereof with them personally at Wailuku, Maui, in said District on the 26th day of February, A.D. 1949.

OTTO F. HEINE,

U. S. Marshal.

By /s/ R. A. NEWTON, JR.,
Deputy.

[Endorsed : Filed Feb. 23, 1949.]

[Title of District Court and Cause.]

RETURN TO RULE TO SHOW CAUSE
ISSUED FEBRUARY 23, 1949

Come now Walter D. Ackerman, Jr., named in this cause individually and as Attorney General of the Territory of Hawaii, Jean Lane, named in this cause individually and as Chief of Police of the County of Maui, defendants herein, and Harold L. Duponte, County Attorney of the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui, pursuant to the Court's rule to show cause issued February 23, 1949, and for their return to said rule to show cause show:

I.

This return is made by the Attorney General of Hawaii on his own behalf and on behalf of Jean Lane, Chief of Police of the County of Maui, and is made by Harold L. Duponte, County Attorney of the County of Maui, on his own behalf and on behalf of his deputy, Thomas Ogata. The Attorney General hereby informs the Court that for the reasons stated in his motion and affidavit filed January 20, 1949, he no longer represents E. R. Bevins, formerly County Attorney of the County of Maui, or Wendell F. Crockett, formerly Deputy County Attorney of the County of Maui, they no longer being public officers.

II.

This cause is moot as to said E. R. Bevins, formerly County Attorney of the County of Maui,

and said Wendell F. Crockett, formerly Deputy County Attorney of the County of Maui, for the reasons stated in the Attorney General's motion and affidavit filed January 20, 1949, and should be dismissed as to them irrespective of the joinder as defendants of their successors in office, by way of substitution or as additional defendants.

III.

Harold L Duponte, County Attorney of the County of Maui, hereby informs the Court that he took office as such County Attorney on January 3, 1949, and that Thomas Ogata is his duly appointed and qualified deputy and his only deputy; that prior to assuming office as such County Attorney said Harold L. Duponte was of counsel for some of the plaintiffs involved in the prosecution commenced in October, 1946, concerning the Paia incident (to which Civil No. 836 relates), and was of counsel for some of the plaintiffs involved in the prosecutions commenced July 16, 1947, and August 1, 1947, concerning the Kaumalapau Wharf incident (to which this cause relates in part); that on February 16, 1949, he informed the Attorney General that he deemed himself disqualified, together with his deputy, as to such prosecutions and the Attorney General concurred that the County Attorney and his deputy are so disqualified; that the Attorney General thereupon informed said Harold L. Duponte that by reason of such disqualification, the Attorney General was assuming direct charge of such prosecutions; that subsequently the

Attorney General informed said Harold L. Duponte, County Attorney of the County of Maui, that for reasons more fully stated in the next paragraph of this return he, the attorney General, unless the County Attorney objected thereto, was assuming direct charge of all of the criminal cases involved in Civil No. 836 and this cause, that is to say, in addition to those cases concerning the Paia incident and the Kaumalapau Wharf incident as to which the County Attorney and his deputy are disqualified, the remaining prosecution commenced July 15, 1947, concerning the Kalua incident; that said County Attorney made no objection to said decision of the Attorney General and has forwarded to the Attorney General all the papers and files of his office concerning said prosecutions; that said County Attorney has no intention of acting further in said criminal matters, or any of them, whether or not restrained by this Court, nor has his deputy.

IV.

Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, hereby informs the Court that on February 16, 1949, he was informed by Harold L. Duponte, who since January 3, 1949, has been and now is the County Attorney of the County of Maui, that prior to assuming office he had been of counsel for some of the plaintiffs in this cause and Civil No. 836 as more fully stated in the preceding paragraph of this return, and that he deemed himself disqualified, together with his deputy, as to the criminal prosecutions concerning the Paia in-

cident (to which Civil No. 836 relates) and the Kaumalapau Wharf incident (to which this cause relates in part); that the Attorney General concurred that the County Attorney and his deputy are so disqualified; that the Attorney General thereupon informed said Harold L. Duponte that by reason of such disqualification, the Attorney General was assuming direct charge of such prosecutions; that subsequently the Attorney General informed said Harold L. Duponte, County Attorney of the County of Maui, that since the County Attorney and his deputy are qualified only as to the one matter of the prosecution commenced July 15, 1947, concerning the Kalua incident (the remaining prosecution to which this cause relates), retention by the County Attorney's office of this one matter, while the Attorney General's office assumed direct charge of the other matters, as to which said County Attorney and his deputy are disqualified, would entail duplication of work by the two offices, both in this Court and, should the restraining order or injunction of this Court be dissolved, in the territorial courts and on subsequent appeals; that to avoid such duplication of work by the two offices he, the Attorney General, unless the County Attorney objected thereto, was assuming direct charge of all of the criminal cases involved in Civil No. 836 and this cause, that is to say, in addition to the cases in which the County Attorney and his deputy are disqualified, the remaining prosecution commenced July 15, 1947, concerning the Kalua incident; that said County Attorney made no objection to said

decision of the Attorney General and the Attorney General has assumed direct charge of said criminal cases.

V.

Harold L. Duponte and Thomas Ogata, County Attorney and Deputy County Attorney, respectively, of the County of Maui, call to the attention of the Court that there is no pleading stating any cause of action against them, there is no subject matter over which this Court has acquired jurisdiction so far as they are concerned, and there is no showing of any need, substantial or otherwise, for continuing or maintaining this action against them as successors in office as contemplated by Rule 25 of the Federal Rules of Civil Procedure. None of the proceedings or evidence herein is binding upon said Harold L. Duponte or Thomas Ogata, County Attorney and Deputy County Attorney, respectively, of the County of Maui. Should this Court order said persons joined as parties defendant, then they pray that they may be informed of the cause of action alleged against them, and may be given an opportunity to move, answer or otherwise plead thereto, and to be heard in their own defense.

VI.

Said Harold L. Duponte and Thomas Ogaha object to being made parties herein individually for the reasons stated in paragraph V. So far as their official capacity is concerned they present the objections stated in paragraph V, and in addition thereto: (1) they assert the immunity of the Ter-

ritory of Hawaii from suit; (2) they call to the attention of the Court that by reason of the matters and things averred in paragraphs III and IV of this return, there is no need for continuing or maintaining this suit against them; and (3) they hereby inform the Court on their oaths of office that notwithstanding they are not parties defendant, they deem themselves bound by such decree as may be entered herein against the Attorney General, so long as and to the extent that said decree is binding upon the Attorney General, for the reason that as law officers of the Territory of Hawaii they could not take any action in the name of the Territory which its chief law officer, the Attorney General, was restrained from taking in its name.

Wherefore, the persons above named who make this return to the rule to show cause issued February 23, 1949, pray that said rule be dismissed.

Dated March 4, 1949.

/s/ WALTER D. ACKERMAN, JR.,
Attorney General of the Territory of Hawaii, Attorney for the Defendants Named in this Cause as Walter D. Ackerman, Jr., Individually and as Attorney General of the Territory of Hawaii, and Jean Lane, Individually and as Chief of Police of the County of Maui.

/s/ HAROLD L. DUPONTE,
County Attorney of the County of Maui, Attorney for Harold L. Duponte, County Attorney of the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui.

Territory of Hawaii,
City and County of Honolulu—ss.

Walter D. Ackerman, Jr., being first duly sworn, deposes and says: That he is the duly appointed, qualified and acting Attorney General of the Territory of Hawaii, that he has read the foregoing return and knows the contents thereof and particularly paragraph IV thereof, and that the matters and things stated in said paragraph IV are true.

/s/ WALTER D. ACKERMAN, JR.

Subscribed and sworn to before me this 4th day of March, 1949.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires: June 30, 1949.

Territory of Hawaii,
County of Maui—ss.

Harold L. Duponte, being first duly sworn, deposes and says: That he is the duly elected, qualified and acting County Attorney of the County of Maui, that he has read the foregoing return and knows the contents thereof, and particularly paragraph III thereof, and that the matters and things stated in said paragraph III are true.

/s/ HAROLD L. DUPONTE.

Subscribed and sworn to before me this 7th day of March, 1949.

[Seal] /s/ EDWARD K. TAM,
Notary Public, Second Judicial Circuit, Territory
of Hawaii.

My commission expires: March 10, 1952.

[Endorsed]: Filed Mar. 10, 1949.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE OF RETURN TO
RULE TO SHOW CAUSE ISSUED FEB-
RUARY 23, 1949

Territory of Hawaii,
City and County of Honolulu—ss.

Samuel Kiilehua, being first duly sworn deposes and says: That he is a citizen of the United States, a resident of the Territory of Hawaii, City and County of Honolulu, and is employed as a clerk in the Office of the Attorney General of the Territory; that on the 10th day of March, 1949, affiant mailed a full, true and correct copy of the "Return to Rule to Show Cause Issued February 23, 1949," filed on said date by the Attorney General of Hawaii and the County Attorney for the County of Maui, to each person hereinafter named, enclosed in a sealed envelope with the postage thereon fully prepaid, addressed to each such person at the respective addresses hereinafter given; and that such copies

were so mailed by depositing same in the United States Post Office in Honolulu, Territory of Hawaii.

Harriet Bouslog, 209 Terminal Building, Honolulu, T. H.

Myer C. Symonds, 209 Terminal Building, Honolulu, T. H.

E. R. Bevins, Wailuku, Maui, T. H.

Wendell F. Crockett, Wailuku, Maui, T. H.

/s/ SAMUEL KIILEHUA.

Subscribed and sworn to before me this 11th day of March, 1949.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1949.

[Endorsed]: Filed Mar. 11, 1949.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now E. R. Bevins, one of the defendants in the above entitled proceedings named therein as such individually and as County Attorney for the County of Maui and making return to the order made in the above entitled proceedings respectfully represents;

That his term of office as County Attorney of the County of Maui expired at 12 o'clock noon on January 3rd, 1949, and that he, the answering de-

fendant, has no longer any power or authority to act either individually or as such County Attorney of the County of Maui; that any further action taken or attempted to be taken by him in the above entitled matter would be without legal authority or effect, and that as to him, the said E. R. Bevins, both individually and as County Attorney of the County of Maui the said action should be dismissed.

Dated this 8th day of March 1949.

/s/ E. R. BEVINS.

[Endorsed]: Filed Mar. 11, 1949.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now Wendell F. Crockett, one of the Defendants in the above entitled proceedings named therein as such individually and as Deputy County Attorney for the County of Maui and making return to the order to show cause made in the above entitled proceedings dated on the 23rd day of February, 1949, respectfully represents:

That his term of office as Deputy County Attorney of the County of Maui expired at 12 o'clock noon on January 3rd, 1949, and that he, the answering defendant, has no longer any power or authority to act as a prosecuting officer of the County of Maui, or Territory of Hawaii, either individually or as such Deputy County Attorney of the County of Maui, or as Deputy of the Attorney General of the

Territory of Hawaii; that any further action taken or attempted to be taken by him individually in the above entitled matter would be without legal authority or effect, and that as to him, the said Wendell F. Crockett, both individually and as former Deputy County Attorney of the County of Maui the said action should be dismissed.

Dated this 11th day of March, 1949.

/s/ WENDELL F. CROCKETT.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE OF RETURN
TO ORDER TO SHOW CAUSE

Territory of Hawaii,
City and County of Honolulu—ss.

Samuel Kiilehua, being first duly sworn deposes and says: That he is a citizen of the United States, a resident of the Territory of Hawaii, City and County of Honolulu, and is employed as a clerk in the Office of the Attorney General of the Territory; that at the request of Wendell F. Crockett, he did on March 12, 1949 serve the return of said Wendell F. Crockett to the order to show cause issued February 23, 1949, being the return filed March 12, 1949, on Bouslog and Symonds, attorneys for the plaintiffs, by leaving a full, true and correct copy of the same at their office, 209 Terminal Building, Honolulu, with the person in charge of said office.

/s/ SAMUEL KIILEHUA.

Subscribed and sworn to before me this 14th day of March 1949.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My Commission Expires June 30, 1949.

[Endorsed]: Filed Mar. 12, 1949.

[Title of District Court and Cause.]

ORDER DISCHARGING RULE TO
SHOW CAUSE

And Now, to wit, this 24th day of March, 1949, upon consideration of the return or answer of Harold L. Duponte, County Attorney of the County of Maui, made on his own behalf and on behalf of Thomas Ogata, Deputy County Attorney of the County of Maui, filed herein on March 10, 1949, in response to the rule to show cause filed herein on February 23, 1949, requiring the said Duponte and the said Ogata and the parties to this case to show cause, if any there be, why the said Duponte and Ogata, or either of them, should not be substituted or added as parties defendant to this cause and be made subject to the decree of this court to be entered in accordance with its opinion filed herein on December 27, 1948, and on consideration of the other answers or returns filed herein on divers dates in response to said rule to show cause, and it appearing from the return or answer to said rule filed

by the said Duponte on his own behalf and on behalf of his Deputy, Ogata, that there is no substantial need for continuing or maintaining the above entitled cause of action against either the said Duponte or the said Ogata and therefore no substantial need of substituting or adding them, or either of them, as parties defendant to the above entitled cause, or including them or either of them within the purview of the decree of this court to be entered in accordance with its opinion filed herein on December 27, 1948, and nothing to the contrary appearing in any of the other returns or answers as filed, it is

Ordered that the said rule to show cause be and the same hereby is discharged.

/s/ JOHN BIGGS, JR.,

Circuit Judge,

/s/ DELBERT E. METZGER,

Chief Judge,

/s/ GEORGE B. HARRIS,

District Judge.

[Endorsed]: Filed Mar. 24, 1949.

In the United States District Court for the
District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., et al.,
Defendants.

DECREE

This cause having come on to be heard before the Honorable John Biggs, Jr., a circuit judge of the Third Judicial Circuit of the United States, designated and assigned by the Honorable Fred M. Vinson, The Chief Justice of the United States, to act as a circuit judge in the Ninth Judicial Circuit of the United States and to discharge all the official duties of a circuit judge thereof as appears from the order of designation and assignment, and also designated and assigned by the Honorable Francis A. Garrecht, Senior United States Circuit Judge of the Ninth Judicial Circuit of the United States, to hold the District Court of the United States for the District of Hawaii as appears from that order of designation and assignment, and before the Honorable George B. Harris, a judge of the District Court of the United States for the Northern District of California, designated and assigned by the Honorable Francis A. Garrecht, Senior United

States Circuit Judge for the Ninth Judicial Circuit of the United States as aforesaid, to hold the District Court of the United States for the District of Hawaii, and before the Honorable Delbert E. Metzger, Senior District (now Chief) Judge of the District Court of the United States for the District of Hawaii, the Honorable Delbert E. Metzger having called to his assistance to hear and to determine the above entitled cause, pursuant to Section 266 of the Judicial Code of 1911, the Honorable John Biggs, Jr., a circuit judge of the Third Judicial Circuit of the United States designated and assigned as aforesaid to act as a circuit judge of the Ninth Judicial Circuit of the United States and to discharge all the official duties of a judge of that circuit, and the Honorable George B. Harris, a judge of the District Court of the United States for the Northern District of California, and the Court having reserved for further consideration the applicability of the provisions of Section 266 of the Judicial Code of 1911, stating that all three judges would sit to hear and determine the above entitled cause, and

The Court having proceeded to hearing of the motions filed by defendants on January 14, 1948 and of the application for preliminary injunction, and

The Court on April 19, 1948 having denied defendants' motions save that those portions of the motions going to the dismissal of the actions as to particular defendants were reserved for further consideration, and

As to the application for preliminary injunction, the Court having ruled that it would consider the matters presented by defendants' motions as constituting their return to the order to show cause why such preliminary injunction should not issue, and said application for preliminary injunction having been consolidated for further hearing with the application for a permanent injunction, by agreement of the parties, and this cause having been consolidated for trial with Civil No. 836, and both causes having been set for trial on April 23, 1948, and having come on for trial on that date, and

The defendants at the outset of the trial having taken and having thereafter preserved objections to the entire testimony and exhibits relating to the grand jury, and the Court having reserved for further consideration the question whether such testimony and exhibits should be struck, and

The parties having made various other motions to strike testimony or documentary evidence which were reserved for later disposition, and

The defendants at the end of plaintiffs' direct case having moved to dismiss the action on all of the grounds stated in their previous written motion and on the ground that the proof had not substantially altered the case, and the Court having reserved this matter for later disposition, and

The cause having been fully heard on the merits, and the Court having made and filed herein its opinion, containing all necessary findings of fact and conclusions of law as contemplated by Rule

52(a) of the Federal Rules of Civil Procedure, and

The opinion of the Court having been filed on December 27, 1948 and it appearing from the motion and affidavit of Walter D. Ackerman, Jr., Attorney General of Hawaii, that the defendants E. R. Bevins and Wendell F. Crockett, respectively County Attorney and Deputy County Attorney of Maui County, ceased to hold their respective offices on or about January 3, 1949 and that Harold L. Duponte was elected County Attorney for the County of Maui and took office on or about January 3, 1949 and that Thomas Ogata is now Deputy County Attorney for Maui County, and the allegations of the motion and affidavit not having been denied by the plaintiffs and being conceded by all parties to be true, and the said Walter D. Ackerman, Jr., Attorney General of Hawaii having moved to dismiss the action as to the defendants Bevins and Crockett as moot, now therefore,

It Is Hereby Ordered, Adjudged and Decreed That:

1. This decree is rendered by the judges above named as a specially constituted three-judge court under sections 2281 and 2284 of revised Title 28, United States Code, or in the alternative, if these provisions be inapplicable in the United States District Court for the District of Hawaii, then as the United States District Court for the District of Hawaii comprised of three judges sitting en banc.

2. This decree is binding on the defendants Walter D. Ackerman, Jr., individually and as Attorney

General of the Territory of Hawaii, and on Jean Lane, individually and as Chief of Police of the County of Maui, and their respective agents and deputies and their successors in office, and upon the defendants E. R. Bevins and Wendell F. Crockett individually.

3. The action is dismissed as to the defendants E. R. Bevins and Wendell F. Crockett in their respective capacities as County Attorney for the County of Maui and Deputy County Attorney for the County of Maui, they having ceased to hold office on or about January 3, 1949.

4. The action is dismissed as to the defendants Ingram M. Stainback, individually and as Governor of the Territory of Hawaii, Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, Augustine Pombo and Claude E. Chatterton, individually and as Jury Commissioners of the County of Maui, Kenneth Auld, Edward H. Baldwin, Richard H. Baldwin, Edward S. Bowmer, Robert P. Bruce, Alfred S. Burns, Ralph O. Cornwell, Jack Costa, E. Stanley Elmore, Allen H. Ezell, Henry S. S. Fong, Charles Goodness, Walter W. Holt, Irving Maeda, H. S. Peterson, John Plunkett, Paul H. Reinhart, Anthony A. Tam, Charles E. Thompson, Wai Ken Tom, and Joseph H. Trask, individually and as Grand Jurors of the County of Maui.

5. This decree shall inure to the benefit of the plaintiff International Longshoremen's and Warehousemen's Union, a voluntary, unincorporated as-

sociation and labor union, and to the plaintiff Jack Kawano, as a member of the International Longshoremen's and Warehousemen's Union and in a representative capacity for and on behalf of said International Longshoremen's and Warehousemen's Union and the members thereof.

6. The action is dismissed as to the plaintiff, Territorial Council of the International Longshoremen's and Warehousemen's Union.

7. The defendants' objections as to the testimony and exhibits relating to the grand jury are overruled and the motion to strike the same denied, and all other motions of any of the parties to strike testimony or documentary evidence are denied.

8. The defendants' motion to dismiss the action made at the end of plaintiffs' direct case is denied.

9. All of the defendants' motions made January 14, 1948 and denied April 19, 1948, having been reconsidered are denied.

10: The unlawful assembly and riot law of the Territory of Hawaii, as contained in chapter 277 of the Revised Laws of Hawaii, 1945, is void as unconstitutional.

11. The persons bound by this decree, as stated in paragraph 2 hereof, are restrained from proceeding with the prosecution commenced July 16, 1947 against the plaintiffs Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, and Shigeyuki Matsuura under any complaint or indict-

ment based on the unlawful assembly and riot statute.

12. The persons bound by this decree, as stated in paragraph 2 hereof, are restrained from proceeding with the prosecution commenced July 15, 1947, against the plaintiffs Abraham Makekau, Elpidio Siruet, Mariano Baldua, Narcisso Sipe and Antonio Mendes, under any complaint or indictment based on the unlawful assembly and riot statute.

13. The persons bound by this decree, as stated in paragraph 2 hereof, are restrained from proceeding with the prosecution commenced August 1, 1947 against the plaintiffs joined as parties by the stipulation of December 31, 1947, to wit, Bartolome Agliam, Guilhermo Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kazuyuki Hashimoto, also known as Kazu-ichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Sutero Unciano, Andres Velasco, and Daniel Kaopuiki, under any complaint or indictment based on the unlawful assembly and riot statute.

14. The plaintiffs shall recover against the de-

fendants their costs herein expended, but shall take nothing by way of damages.

/s/ JOHN BIGGS, JR.,
Circuit Judge.

/s/ DELBERT E. METZGER,
Chief Judge.

/s/ GEORGE B. HARRIS,
District Judge.

Dated: March 29th, 1948.

[Endorsed]: Filed and Entered Mar. 29, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the final judgment and decree entered in this action on March 29, 1949.

Dated this 26th day of April, 1949.

WALTER D. ACKERMAN, JR.,
Individually and as Attorney
General of the Territory of
Hawaii, and JEAN LANE,
individually and as Chief of
Police of the County of Maui,

By /s/ RHODA V. LEWIS,
Assistant Attorney General
Attorney for Walter D. Ack-
erman, Jr., and Jean Lane.

[Endorsed]: Filed April 26, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that E. R. Bevins and Wendell F. Crockett, defendants above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the final judgment and decree entered in this action on March 29, 1949.

Dated this 22nd day of April, 1949.

/s/ E. R. BEVINS,

In Propria Persona.

/s/ WENDELL F. CROCKETT,

In Propria Persona.

[Endorsed]: Filed April 26, 1949.

April 26, 1949.

Bouslog and Symonds,
Attorneys at Law,
Honolulu, T. H.,

Attention: Harriet Bouslog.

Dear Mrs. Bouslog:

In accordance with Rule 73(b) of the F.R.C.P. I am enclosing herewith copies of notice of appeal filed by Walter D. Ackerman, Jr. and Jean Lane, and by E. R. Bevins and Wendell F. Crockett, Appellants in the cause entitled International Longshoremen's and Warehousemen's Union, et al versus Walter D. Ackerman, Jr., et al, Civil 828 of this Court.

Respectfully,

WM. F. THOMPSON, JR.,

Clerk.

By THOS. P. CUMMINS,
Deputy.

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents:

That Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui, as Principals, and United States Fidelity and Guaranty Company of Baltimore, Maryland, a corporation organized under the laws of the State of Maryland and authorized to

act as surety and do business in the Territory under the provisions of the laws of the Territory of Hawaii, as Surety, are held and firmly bound unto International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union; Jack Kawano, individually and as a member of the ILWU and as President of the Territorial Council of the ILWU, Diego Barbosa, John Maile, Victor Degamo, Harry Kapena Kaopuiki, Isami A. Nitta, Ah Sing Ah Ho, James Kia Aikala, Shigeru Yagi, Basiliso Arruiza, Midori Oda, Shigeyuki Matsuura, Abraham Makekau, Elipdio Siruet, Mariano Baldua, Narcisso Sipe, Antonio Mendes, Bartolome Agliam, Guilherme Alboro, Domingo Basinga, Jose Carranza, Daniel Casil, Honorio Collardo, also known as Gerardo Taal, Mariano Dugay, Saturnino Gaspar, Masao Gima, Yoshio Ginoza, Victor Guillermo, Kuzuyuki Hashimoto, also known as Kazuichi Hashimoto, Simon Hermano, Rocky Honda, Eusticio Hubin, also known as Estikio Raas, Abraham Makekau, Kenneth Matsumoto, Hiroshi Oshiro, Mitsuyuki Oyama, Pablo Pineda, Lono Pokipala, Norberto Quinton, George Ramaila, Melecio Reotorio, Alipio Sajor, Vicente Saloricman, Itsuo Shimizu, Ryoji Shimizu, Sam Shin, Jack Narcisso Sipe, Jose Sotelo, Ignacio Sumagit, Nobuteru Tomita, Suterio Unciano, Andres Velasco, and Daniel Kaopuiki, their heirs, executors, administrators, successors or assigns, in the full and just sum of \$250.00, to which payment, well and truly to be made, we bind ourselves, our heirs,

executors and administrators, successors or assigns, jointly and severally by these presents.

Signed and Sealed at Honolulu, T. H., this 26th day of April, 1949.

Whereas, lately at the October, 1948, term of the District Court of the United States in and for the District and Territory of Hawaii, in a suit pending in said court, numbered and entitled as above set forth, a final judgment and decree was rendered against said Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and against Jean Lane, individually and as Chief of Police of the County of Maui, and the said defendants Walter D. Ackerman, Jr. and Jean Lane appeal from said judgment and decree to the United States Court of Appeals for the Ninth Circuit.

Now, Therefore, the condition of the above obligation is such that if the said Walter D. Ackerman, Jr. and Jean Lane shall prosecute their appeal with effect and pay all costs if the appeal is dismissed or said judgment and decree affirmed, or such costs as the appellate court may award if said judgment and decree be modified, then the above obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, the principals and surety

herein named have caused this instrument to be duly executed, on this 26th day of April, 1949.

/s/ WALTER D. ACKERMAN, JR.,
Individually and as Attorney
General of the Territory of
Hawaii.

/s/ JEAN LANE.

UNITED STATES FIDELITY
AND GUARANTY COMPANY,

[Seal] By /s/ CALVERT G. CHIPCHASE.
Its Attorney in Fact.

Territory of Hawaii,
City and County of Honolulu—ss.

On this 26th day of April, 1949, before me personally appeared Walter D. Ackerman, Jr., attorney general of the Territory of Hawaii, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed, individually and as such Attorney General.

[Seal] /s/ AILENE JARRETT,
Notary Public, First Judicial Circuit, Territory of
Hawaii.

My commission expires June 30, 1949.

Territory of Hawaii,
County of Maui—ss.

On this 23rd day of April, 1949, before me personally appeared Jean Lane, to me known to be the person described in and who executed the foregoing

instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ EDWARD K. TAM.

Notary Public, Second Judicial Circuit, Territory of Hawaii.

My commission expires March 10, 1952.

Territory of Hawaii,

City and Counyt of Honolulu—ss.

On this 28th day of April, 1949, before me personally appeared Calvert G. Chipchase, to me personally known, who being by me duly sworn did say that he is the Attorney-in-Fact of the United States Fidelity and Guaranty Company, duly appointed under Power of Attorney dated the 29th day of January, 1948, which Power of Attorney is now in full force and effect, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation under the authority of its Board of Directors, and said Calvert G. Chipchase acknowledged said instrument to be the free act and deed of said corporation.

[Seal] /s/ WILLIAM B. STEVEN,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires May 8, 1952.

The within bond is hereby approved this 28th day of April, 1949.

/s/ DELBERT E. METZGER,
Judge of the District Court of the United States
in and for the District and Territory of Ha-
waii.

[Endorsed]: Filed April 28, 1949.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE AND
DOCKET RECORD WITH THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

Upon application of Walter D. Ackerman, Jr.,
Attorney General of the Territory of Hawaii, and
good cause appearing therefor:

It Is Hereby Ordered that the time of all of the
appellants for filing the record on appeal and dock-
eting the appeal with the United States Court of
Appeals for the Ninth Circuit be and the same is
hereby extended to and including July 25, 1949.

Dated at Honolulu, T. H., this 26th day of May,
1949.

/s/ D. E. METZGER,
United States District Judge.

Approved:

BOUSLOG & SYMONDS,
By /s/ HARRIET BOUSLOG,
Attorneys for Respondents.

[Endorsed]: Filed May 26, 1949.

In the United States District Court
For the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary
unincorporated association and labor union, et
al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union, et
al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

SUGGESTION FOR INCORPORATION IN
THE RECORD ON APPEAL OF CERTAIN
MATTERS OF RECORD IN THIS COURT

Comes now Walter D. Ackerman, Jr., Attorney

General of Hawaii, for himself as appellant in the above entitled cases and for Jean Lane, Chief of Police of the County of Maui, an appellant in Civil No. 828, by Rhoda V. Lewis, Assistant Attorney General of Hawaii, and hereby presents to the Court as follows:

1. This matter is relevant and material to the question whether in hearing and disposing of the above entitled cases the Court was sitting en banc, and pursuant to Rule 75(h) of the Rules of Civil Procedure and record on appeal should contain the matters herein presented.

2. Footnote 59 of the Court's opinion rendered December 27, 1948, as corrected by the Court subsequent to the filing of the opinion, after referring to the fact that the Honorable J. Frank McLaughlin, Judge of this Court, did not sit in these cases, states:

“* * * This fact does not prevent this tribunal from exercising jurisdiction in the instant cases for it is a rule of general application that the death, disqualification or absence of a judge will not deprive the remaining judges of the court of authority to hold court and to adjudicate cases provided that the number of the court is not reduced below that legally required for the transaction of business.

* * *”

3. It is hereby suggested to the Court that Judge McLaughlin was not disqualified in the above entitled cases nor was he absent from the Territory of Hawaii during any part of the relevant period,

December 1, 1947 to and including May 1, 1948, when the trial of the case was concluded, and during all of said period he was in attendance upon his judicial duties, the same continuing true up to the present time.

4. It is further suggested to the Court that the foregoing facts appear from the records of this Court, in that:

a. There is not on file any certificate of the disqualification of Judge McLaughlin in these cases and the records of this Court do not show that there is or ever was such disqualification.

b. When the opinion of this Court was filed on December 27, 1948 the above cited footnote 59 contained the following statement in reference to Judge McLaughlin:

“* * * The other Judge of the District Court for the District of Hawaii for sufficient reasons deemed himself disqualified to sit in the instant litigations. * * *”

Subsequent to the filing of said opinion said footnote 59 was revised by the Court and the above quoted statement was omitted therefrom. While the Court, by this revision of footnote 59, corrected the error as to the disqualification of Judge McLaughlin contained in the original opinion, there remains in said footnote 59 as so revised a possible question as to whether Judge McLaughlin was absent during the hearing and disposition of these proceedings.

c. The records of this Court show that Judge McLaughlin was not so absent, either from the Territory or from attendance upon his duties.

Wherefore, Walter D. Ackerman, Jr., Attorney General of Hawaii, pursuant to Rule 75(h) of the Rules of Civil Procedure, suggests to the Court that the matters herein stated and in the attached affidavit and letter filed in support hereof, be incorporated in the record on appeal of these cases.

Dated at Honolulu, T. H., June 23, 1949.

WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii,
Appellant herein and as Counsel for Jean Lane, Chief of Police of the County of Maui, an Appellant in Civil No. 828,

By /s/ RHODA V. LEWIS,
Assistant Attorney General of Hawaii.

[Title of District Court and Causes.]

AFFIDAVIT

Territory of Hawaii,
City and County of Honolulu—ss.

Rhoda V. Lewis, being first duly sworn, deposes and says: That she is the Assistant Attorney General of Hawaii and as such, on the 23rd day of June, 1949, did address to William F. Thompson, Clerk of the United States District Court for the District of Hawaii, a letter requesting confirmation of certain facts of record in said court. That on the 23rd day of June, 1949, said William F. Thompson

did reply to said letter by endorsing on the copy thereof his confirmation of facts stated therein, and that the attached is the Clerk's confirmation of the facts stated in affiant's letter.

/s/ RHODA V. LEWIS.

Subscribed and sworn to before me this 23rd day of June, 1949.

[Seal] /s/ AILENE JARRETT,

Notary Public, First Judicial Circuit, Territory of Hawaii.

My commission expires June 30, 1949.

[Territory of Hawaii—Seal]

Territory of Hawaii

Department of the Attorney General

Honolulu

January 23, 1949

Mr. William F. Thompson, Jr.

Clerk, U. S. District Court

District of Hawaii

Federal Building

Honolulu, T. H.

Re: Civil Nos. 828 and 836

ILWU v. Ackerman

Dear Sir:

This letter is written in order to obtain confirmation of certain facts of record in your Court, for use in connection with a suggestion that such facts be incorporated in the record on appeal in the above entitled cases.

It is my understanding that the following facts are true and correct, as shown by the records of your Court:

1. There is not on file any certificate of the disqualification of Judge McLaughlin in Civil 828 and 836 or in either of said cases, and the records of your Court do not show that there is or ever was such disqualification.

2. Judge McLaughlin was not absent from the Territory of Hawaii during any part of the period in which these cases were being heard and tried, to wit, December 1, 1947 to and including May 1, 1948, and during all of said period he was in attendance upon his judicial duties, and the same continuing true up to the present time.

If the above are true statements of fact as shown by the records of your Court, will you please reply by stating on a copy of this letter and returning the same to me.

Very truly yours,

/s/ RHODA V. LEWIS,

Assistant Attorney General.

June 23, 1949

To Miss Rhoda V. Lewis,

Assistant Attorney General of Hawaii:

This is to state that the facts above stated in

paragraphs 1 and 2 of your letter are true and correct as shown by the records of this Court.

/s/ WM. F. THOMPSON, JR.,
Clerk, United States District
Court for the District of Ha-
waii.

[Endorsed]: Filed June 23, 1949.

[Title of District Court and Causes.]

STIPULATION

It Is Hereby Stipulated by and between the parties to the above entitled proceedings that said proceedings may be consolidated for the purposes of preparation and filing of the records on appeal and docketing of the appeals.

Dated at Honolulu, T. H., this day of June, 1949.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

/s/ WENDELL F. CROCKETT,
In Propria Persona for
E. R. Bevins.

BOUSLOG & SYMONDS,
By /s/ HARRIET BOUSLOG,
Attorneys for Respondents.

[Title of District Court and Causes.]

ORDER

Pursuant to the stipulation of the parties in the above entitled proceedings, It Is Hereby Ordered that said proceedings be and they hereby are consolidated for the purposes of preparation and filing of the records on appeal, and docketing of the appeals.

Dated:

/s/ DELBERT E. METZGER,
U. S. District Judge.

[Endorsed]: Filed June 27, 1949.

In the United States District Court
For the District of Hawaii
Civil No. 828

INTERNATIONAL LONGSHOREMEN'S &
WAREHOUSEMEN'S UNION, a voluntary,
unincorporated association and labor union, et
al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and
as Attorney General of the Territory of Ha-
waii, et al.,

Defendants.

WAIVER OF BOND ON APPEAL AS TO AP-
PELLANTS WENDELL F. CROCKETT
AND E. R. BEVINS

Whereas, bond on appeal in the amount of \$250.00 has been furnished and filed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and by Jean Lane, individually and as Chief of Police of the County of Maui, Territory of Hawaii, and appellees deem that an additional bond of Wendell F. Crockett and E. R. Bevins is not necessary for their security,

Now Therefore, bond on appeal is hereby waived as to Wendell F. Crockett and E. R. Bevins.

Dated at Honolulu, T. H., July 1st, 1949.

BOUSLOG AND SYMONDS,

By /s/ HARRIET BOUSLOG,

Attorneys for Appellees.

[Endorsed]: Filed July 2, 1949.